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Washington

1921

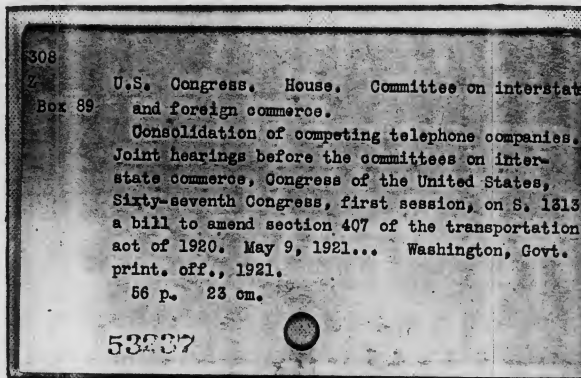
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CONSOLIDATION OF COMPETING TELEPHONE COMPANIES

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JOINT HEARINGS

BEFORE THE

COMMITTEES ON INTERSTATE COMMERCE
CONGRESS OF THE UNITED STATES

SIXTY-SEVENTH CONGRESS
FIRST SESSION

ON

S. 1313

A BILL TO AMEND SECTION 407 OF THE
TRANSPORTATION ACT OF 1920

—
MAY 9, 1921
—

Printed for the use of the Committee on Interstate Commerce



WASHINGTON
GOVERNMENT PRINTING OFFICE
1921

MEMBERS OF THE JOINT SUBCOMMITTEE.

SENATORS.

ATLEE POMERENE, Ohio, *Chairman*.
ALBERT B. CUMMINS, Iowa. CHARLES E. TOWNSEND, Michigan.

REPRESENTATIVES.

WILLIAM J. GRAHAM, Illinois, *Chairman*.
JOHN G. COOPER, Ohio. GEORGE HUDDLESTON, Alabama.
ROMER HOCH, Kansas. HARRY B. HAWES, Missouri.

CONSOLIDATION OF COMPETING TELEPHONE COMPANIES.

MONDAY, MAY 9, 1921.

JOINT COMMITTEE ON INTERSTATE COMMERCE OF THE SENATE
AND INTERSTATE AND FOREIGN COMMERCE
OF THE HOUSE OF REPRESENTATIVES,
Washington, D. C.

The joint committee met, pursuant to call, at 10 o'clock a. m., in committee room, Capitol, Senator Atlee Pomerene presiding.

Present on behalf of the Senate subcommittee: Senator Pomerene and Senator Cummins.

Present on behalf of the House subcommittee: Representative Graham, Representative Cooper, Representative Hoch, and Representative Huddleston.

Senator POMERENE. The joint committee has met this morning to consider bill S. 1313, introduced in the Senate on April 28, 1921, which bill is as follows:

A BILL To amend section 407 of the transportation act of 1920.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 407 of the transportation act of 1920 be, and is hereby, amended by adding thereto, next paragraph 7 thereof, another paragraph, hereby designated as paragraph 7a, as follows:

"7a. The commission shall also have power and authority, to the extent hereinafter provided, upon application by any telephone company or companies subject to this act, to authorize and approve the acquisition by a telephone company of the whole or any part of the property, or of the control of any other such company either by consolidation, by the purchase of securities (as defined in paragraph 2, section 439, of the transportation act of 1920) or property by lease or in any other manner. The application therefor shall first be filed with the public service commission or other regulatory body, if any, created by the law of any State having jurisdiction in the premises, and after the consent of such State authority has been granted thereto and not otherwise the said application may be submitted to the commission in such manner as it may prescribe. In case there is no such State commission or other regulatory body having jurisdiction in the premises, any telephone company desiring such acquisition may make application therefor to the commission for its authority and approval thereon. In such case the commission shall issue a notice to the governor of each of the States in which the physical property affected, or any part thereof, is situated, and to any other persons as it may deem advisable, of the time and place for the public hearing on such application, and thereupon shall hear and consider said application and the facts applicable thereto. In a case instituted before it by either of the above methods, if the commission shall find that the proposed transaction will be in the public interest, it shall enter an order approving and authorizing the acquisition, and thereupon the provisions of paragraph 8 of this section shall extend to the telephone companies affected by such order."

I think we are ready to proceed to hear witnesses who wish to make statements in regard to this bill. Who will be heard first?

Representative GRAHAM. Mr. Chairman, I have here a list of names that these gentlemen have presented. I imagine that on account of the shortness of time they had better call their most important witnesses?

Senator POMERENE. I think so.

Representative GRAHAM. Who do you want first, Mr. Stevens?

Mr. STEVENS. Senator Willis would probably like to be heard first.

Senator WILLIS. Inasmuch as our time is rather short perhaps we better hear these gentlemen, and I can talk any time after they have finished. I am interested in this bill, but suggest that you call the gentlemen whose names have been furnished, some of whom have traveled quite a distance to make argument on the bill, and I can be heard later.

Senator POMERENE. Then the subcommittee is ready to hear the first witness.

STATEMENT OF MR. F. B. MacKINNON, CHICAGO, ILL., PRESIDENT THE UNITED STATES INDEPENDENT TELEPHONE ASSOCIATION.

Mr. MacKINNON. Mr. Chairman, and gentlemen of the committee, I am speaking for the independent group of the telephone industry, taking that group as a whole.

Senator POMERENE. In contradistinction to the Bell system?

Mr. MacKINNON. In contradistinction to the Bell system. The independent group, as we use the term, covers those companies that are not owned or controlled, either directly or indirectly, by the Bell Co., or any company in the Bell system.

We are interested in this bill because it provides a procedure which we think desirable and necessary. The independent telephone companies of this country, numbering some 8,000, include such companies as the Ohio State Co., which is the largest, down to many small rural companies which operate in the crossroads communities of the country.

These 8,000 independent telephone companies operate some 15,000 switchboards, or, more correctly stated, they operate switchboards in some 15,000 localities, because some of the larger companies operate more than one switchboard in a town.

The Bell Co. operates, in round numbers, 6,000 switchboards. The majority of the subscribers to the Bell system are included in the 12 largest cities of the United States.

Our companies cover, territorially speaking, the largest portion of the country. We furnish terminal facilities for the toll lines not only of our own systems, but of the Bell Co. throughout the smaller towns and cities of the United States. Therefore we are interested in whatever is done in connection with adjusting the telephone situation.

I do not think it is necessary for me to recall to the minds of the members of the committee the telephone situation in this country some 15 or 16 years ago, at which time the competitive fight between independents and the Bell had reached its height. But I think you will recall, all of you, that at that time in the majority of the cities and towns of the United States there were in operation duplicate exchanges. About that time public sentiment, which in the end always prevails, reached the point where the people said: "We do not want any longer to have two exchanges in our town."

Both groups of the industry, the independents and the Bell, realized that public sentiment had reached that point, and from that time on there has been an endeavor to readjust conditions and rearrange matters to meet public sentiment and to protect the investments in these properties.

Therefore, in speaking to you to-day I am speaking as the representative in a national sense of those men who feel the responsibility and have felt the responsibility for some time to yielding to public sentiment, in following public sentiment, in the matter of protecting investments in these properties. Public sentiment crystallized, along about 1910, in the regulation of public utilities by State and Federal authorities, especially so far as the telephone business was concerned.

You will find upon investigation that from the year 1910 to the year 1913 the majority of the State public service or railroad commissions, whatever be their title, were created; and all of those commissions were given authority over telephone companies except in three States—Texas, Iowa, and Delaware; Delaware not having a commission.

Senator POMERENE. Do they have any authority to control prices in those three States of which you speak?

Mr. MacKINNON. Not in those three States.

Senator POMERENE. How are prices there controlled?

Mr. MacKINNON. In Texas rates and service are under the control of the municipalities. In Delaware certain municipalities—for instance, Wilmington—have control over rates and service of the utilities within those communities. In Iowa, except in a few isolated instances, there is no control over rates and service other than by the municipality or the city.

Senator POMERENE. Iowa ought to be regulated, I should say.

Senator CUMMINS. We are regulated to our heart's content. Public utilities there are simply operating under franchises or contracts made with the municipalities.

Mr. MacKINNON. Many of these public-service commissions exercise control or influence not only over the rates and service but over the consolidation and transfer of property. Since that time, as I have already stated, there has been a constant endeavor on the part of those interested in the properties to readjust conditions. This, however, has not been carried on in any systematic or country wide or even State wide manner. The plan has been, at least in many States, that whichever company was the majority company would take over the minority exchange, and that has resulted quite frequently in having in one county a Bell exchange, and in the next county an independent exchange, and in the next county, perhaps, a Bell exchange, and still further on an independent exchange. Therefore, under this unsystematic plan in many States contiguous territory is not operated by the Bell system or the independents.

In other States, such as Minnesota, both groups were represented by large companies, and an adjustment was made by which certain Bell exchanges in the southern half of the State were turned over to the independents and in the northern half of the State the exchanges of the independent companies were taken over by the Bell Co.

In many States the situation has been that the Bell Co. has disposed of its property in most of the towns to the independent companies. That is the situation in the State of Ohio, where over 60 per cent of the territory is covered by noncompetitive independent exchanges.

But, gentlemen of the committee, as I have already stated, this has not been done in a systematic way but by an adjustment of each local situation as the economic needs and demands of the people

have made it necessary; under that unsystematic plan we have adjusted competitive conditions so far as duplicate exchanges are concerned in most of the States of the country.

In Iowa, to which you referred a while ago, Senator Pomerene, there is practically no competition in exchanges. There are not more than half a dozen duplicate exchanges, and those are in the smaller communities. The same conditions exist in Kansas, Nebraska, and South Dakota; also in Texas, where the larger independent companies have taken over practically all of the duplicate exchange points.

But this process of readjustment, as I have indicated to you, has left us with properties that are scattered, and has left the Bell Co. with properties that are scattered; and in response to the public sentiment for better service, as well as in response to financial conditions, which at this time are not very good, we find it necessary to make some rearrangement in many States between ourselves and the Bell companies. We find that in order for our companies to take over certain territory and operate it efficiently we must say to the Bell Co.: "We want you to take over some of our exchanges in another part of the State, or in an adjoining county, and we will take over your exchange at the point or points where conditions make it advisable."

I might explain that for the benefit of our stockholders we are bound to maintain in the industry the investment that is now there, because, I am sorry to say, there is no new money seeking investment in telephone companies or public utilities. Therefore it is necessary for both ourselves and the Bell Co., in readjusting the telephone situation to meet the public demands, to make such exchanges of properties among ourselves as will protect the Bell investment and will protect our investment, as well as protect the public.

Senator CUMMINS. When you speak of the Bell Co., do you mean the American Bell Telephone & Telegraph Co., or all of the companies controlled by that company?

Mr. MACKINNON. I mean all of the companies controlled by that company. Their entire subsidiary company system. The Bell system is composed of 145 subsidiary companies, all of the subsidiary companies being under the American Telephone & Telegraph Co.

Senator CUMMINS. All of them controlled by the American Telephone & Telegraph Co.?

Mr. MACKINNON. Yes, sir.

Senator WILLIS. I heard a Senator, not a member of this committee, state the other day, touching this bill, that there really was not any competition at all in the telephone business in the country; that the Bell Co. ran the whole thing. I want to know whether the Bell Co. runs you or your company.

Mr. MACKINNON. That is a misguided statement made every once in a while. There is nobody so independent as an independent telephone man. If he had not been very independent he never would have gone into the telephone business and made the fight that he did.

I want to make this statement so that it may be made clear in the minds of the committee. In practically all our exchanges—that

is, 15,000 exchanges—the same men are in control of those properties that organized them and took control of them at the beginning. It is one of the problems of our business that those men have continued all these years in the operation of the properties and they have reached the point where they are saying to-day: "We want some rearrangement made so that we can in a certain sense be relieved of the load we are carrying." The same men are operating those companies to-day. There is no control of independent companies by the Bell Co., and these independent companies operate some 15,000 exchanges in this country, as I have already stated. They are not under the control, dictation, or influence of the Bell Co.

Further answering your question, Senator Willis, we maintain that competition in the telephone business does not consist in simply operating two exchanges in a town, but that that competition goes further. We have competition in operating methods and in use of equipment. The independents feel that their operating methods are more economical and efficient than the Bell, and the Bell have some contentions that they make as to the efficiency and economy of their operations.

Senator POMERENE. In those States where rates are controlled by public utility commissions, or some other organization, theoretically there is no competition in service, is there?

Mr. MACKINNON. That is true.

Senator POMERENE. In some localities during the last few years it has been a question as to which company could furnish the worst service.

Mr. MACKINNON. You have brought out a very good point there, Senator, because the whole of this competitive situation is coupled with the financial conditions now existing.

Senator POMERENE. I realize that.

Mr. MACKINNON. It has been impossible for every company properly to protect its property or make the extensions necessary to give service. It has been very hard to get money with which to rebuild properties.

Senator POMERENE. And if there is a consolidation of those companies, then more people can get service at a lower rate in the case of one system than they can with two systems?

Mr. MACKINNON. There is no doubt about that. The duplication of one system in the telephone industry, and if any of you have had occasion to use two systems in a town you know about it, is not great. I should say that 80 per cent of the people in any town, and probably in your own home town, Senator Pomerene, have no connection with people who are subscribers to the other exchange. Probably there is about 20 per cent of duplication.

Senator POMERENE. I think that is right.

Mr. MACKINNON. The result is that the people who are subscribers to the Ohio State exchange in your town do not reach people on the other exchange.

Senator WILLIS. It always happens that the man you want to talk to is on the other phone.

Mr. MACKINNON. Very frequently that is true.

Representative GRAHAM. I wish you would explain to the committee the rather anomalous condition that has occurred in the State of Illinois about the public utilities commission requiring a physical connection. Do you know about that?

Mr. MACKINNON. Yes, sir; I am aware of that.

Representative GRAHAM. That is, they have held that while they can not force a combination of the companies in some cases, yet they have ordered a physical connection between the exchanges in the same town which, of course, practically destroys the property of one or the other.

Mr. MACKINNON. That is the case. There are a number of States which have physical connection laws, so called, which give the public service commissions authority to require that at this time. The inevitable result is that one or other of the exchanges is ruined by that sort of process. And it is this condition which is foreseen and has brought about a request to me, and I think to Representative Graham from Illinois, on the part of the Illinois Independent Telephone Association, through their general counsel, Senator O. F. Barry, that this sort of procedure be provided so as to enable these competitive points, these duplicate points, to be eliminated before every State has to endure the hardship of such physical connection as the Illinois Public Service Commission has ordered in several cases.

Representative HUDDLESTON. How does it ruin an exchange?

Mr. MACKINNON. If an exchange which is now operating successfully is obliged to give up its entire toll system and its connections to another exchange in the same town and which has no money invested in that toll system, it may be that that other exchange, by reason of being given the use of the public toll system of its competitor, can take away the subscribers of the other exchange. It results to the detriment of one or the other almost invariably.

Resuming, we therefore are anxious that there should be some procedure established which will provide a Federal authority to pass upon our transfers and mergers of telephone properties so as to give all our companies who may desire to do so this clearance from Federal laws, about which there is now constant doubt. And that is our reason for appearing before you and approving the purpose of this bill.

Senator POMERENE. In brief your position is that by such consolidations you can give better service at less expense to the subscriber; that it will be easier to finance one system than it is to finance two systems in a community; that it will do away largely with the overhead expenses of the two systems by requiring only the overhead expense of one system; and that each subscriber will get the same or better service with one instrument in his house or office than he can with two. It would also be less expensive to the subscribers and the companies?

Mr. MACKINNON. That is true.

Senator POMERENE. What are the other advantages?

Mr. MACKINNON. There is just one other advantage which I think of that you have not named, and that is the advantage I have spoken of, which will permit us to readjust territory so as to enable us to give better service to the public.

Senator POMERENE. Will you state, in brief, what the objections are to such consolidation as you have heard them stated?

Mr. MACKINNON. The only objection I have heard anyone raise to this proposition is the danger that it might give the Bell Co. further control of the industry. That is a danger that I think amounts to nothing. From our standpoint we do not consider it a danger.

This proposition would put into the hands, first, of State authorities, and secondly, of Federal authorities, the advantage of control, and establishes a procedure by which they can control. We feel that we will be in less danger of such a contingency as that under the proposed plan than we are now under present conditions.

Senator WILLIS. Before you take your seat will you take up the bill and state very definitely what this bill purposes to do, unless some other gentleman is going to do that? Give us some definite information about just what this bill provides.

Mr. MACKINNON. I should be glad to do that, except that I can not discuss legal points; not being a lawyer I do not want to be asked to discuss such points. This bill simply provides that the Interstate Commerce Commission shall have power and authority to pass upon mergers, sales, and transfers of telephone companies, an authority which that commission does not now have.

Senator WILLIS. They have authority to pass upon consolidation of railroad companies, do they not?

Mr. MACKINNON. They do now, under the transportation act of 1920.

Senator WILLIS. Do they have authority to pass upon consolidation of express companies?

Mr. MACKINNON. Yes, sir.

Senator WILLIS. And this bill proposes to extend the authority the Interstate Commerce Commission already possesses, to extend it to telephone companies?

Mr. MACKINNON. Yes, sir; it requires that before an application shall be made to the Interstate Commerce Commission it shall be made to the regulatory body of the State.

Senator CUMMINS. It is somewhat misleading to say that the Interstate Commerce Commission has power to pass upon the consolidation of railroad companies in the same sense that it is proposed to give the commission authority here.

Mr. MACKINNON. Yes; I think there ought to be that qualifying statement made in regard to that matter.

Senator CUMMINS. Mr. MacKinnon, I think that every member of the subcommittee feels that there ought not to be two telephone exchanges in a single town. From the talks I have had with the members of the committee, there is not really any question about that; the difficulty here is one of jurisdiction. A telephone exchange, properly speaking, is not within the jurisdiction of Federal authority.

I agree that we are in rather a twilight zone when dealing with this subject, but I think it is pretty well understood that you can not go to the Interstate Commerce Commission for authority to regulate the rates and practices of a purely local exchange. The mere fact that the subscribers of an exchange, or the users of a telephone, are enabled to connect themselves with a toll line which may do interstate business is not sufficient to give the Interstate Commerce Commission authority over the exchange itself. The only point that is at all doubtful, as far as I am concerned, is the attempt to give the Interstate Commerce Commission authority to consolidate or to merge two exchanges, knowing that the Interstate Commerce Commission has no authority whatever to regulate the rates or practices of that exchange. That is the only difficulty in my mind with regard to this bill.

Mr. MacKINNON. That point I am going to ask Mr. Stevens to discuss. It is a jurisdictional point, which I think an attorney should discuss. But, speaking as a layman and not as an attorney, we have felt that the control exercised by the State regulatory bodies, where they have absolute control over rates and service, gives that protection.

Senator CUMMINS. I agree with you about that. You have mentioned Iowa. It has no regulatory commission as far as telephones are concerned. A short while ago, a few years ago at least, we had two telephone systems in Des Moines, as an illustration, the Bell system and the Mutual Telephone Co. Both were large systems, because they supplied the needs of a city of 100,000 people. A consolidation took place, as you know, between the Mutual and the Bell, and we have now but one system, which I think is very satisfactory to all the people of that city. But it seems to me the suggestion that those two telephone companies should have been required to come to the Interstate Commerce Commission in order to get authority to make the consolidation would have meant an appeal to a jurisdiction or tribunal that has no power over them at all. I have found some difficulty in reaching the conclusion that the Interstate Commerce Commission ought, under any circumstances, to attempt to repeal the antitrust laws so far as those two companies are concerned; I do not believe it was a violation of the antitrust law, mark you, and I think the consolidation was entirely valid, but that is the point in my mind in regard to this bill.

Mr. MacKINNON. May I not ask if the Interstate Commerce Commission could control the interstate service in and out of Des Moines?

Senator CUMMINS. Yes; it can control that, but the interstate service in and out of Des Moines is negligible as compared with the local service, the intrastate service. It has been held, and there seems to be no dispute about it, that the Interstate Commerce Commission can not control rates and practices of an exchange simply because the exchange may be connected with an interstate service or a toll-line service and now and then does interstate business. But it can control interstate business, of course.

Mr. MacKINNON. It seems to me that even though the interstate business is a very small part of the business of the exchange, yet to that extent, to the extent there is any control to be exercised by Federal authority, we cover that control by this measure. I would like to have Mr. Stevens discuss that point for the benefit of the committee because it is more of a legal point. Mr. Reber, one of our representatives, from St. Louis, has a condition somewhat similar to yours. The St. Louis exchange operates in St. Louis and also in East St. Louis. We have a great deal of business there which is purely an exchange business.

Senator CUMMINS. It may be somewhat similar, and in such a case the Interstate Commerce Commission could undoubtedly regulate its business.

Mr. MacKINNON. I think that concludes my statement, gentlemen of the committee.

Senator POMERENE. Do any of the members of the joint committee wish to ask any questions?

Representative HUDDLESTON. I would like to ask a few.

Senator WILLIS. I would suggest that Mr. Stevens be permitted to make his statement now, so as to fit in with this statement made by Mr. MacKinnon.

Representative GRAHAM. Mr. Huddleston, of our committee, wants to ask a few questions.

Senator WILLIS. Oh, I beg pardon.

Senator POMERENE. You may proceed, Mr. Huddleston.

Representative HUDDLESTON. To what extent is there competition in the telephone business now?

Mr. MacKINNON. There are about 1,000 cities in the United States now that have two exchanges.

Representative HUDDLESTON. That does not necessarily mean competition.

Mr. MacKINNON. Not in all those places.

Representative HUDDLESTON. Is there any place where you know that actual competition exists?

Mr. MacKINNON. There are some cities—

Representative HUDDLESTON (continuing). I mean in the matter of prices or charges for the service rendered.

Mr. MacKINNON. Inasmuch as rates are regulated by the State authorities, the competition which is produced by rates and service has been entirely removed.

Representative GRAHAM. There are some places in your State, and I know of one—my own home town—where one company has one rate and another company has a lower rate, both fixed by the public-service commission.

Mr. MacKINNON. Yes.

Representative HUDDLESTON. That does not necessarily imply competition. One service may be of less value.

Mr. MacKINNON. Yes. In some cases rates are fixed upon the value of the property.

Representative HUDDLESTON. Fixed upon the extent to which they are in a position to serve?

Mr. MacKINNON. Yes, sir.

Representative HUDDLESTON. I was curious to know whether there is anywhere actual competition.

Mr. MacKINNON. I do not think there is in the sense that we formerly used the expression. That matter is practically regulated by the regulatory bodies. Whereas this rule of the State commission granting a lower rate for one exchange in the same town than is granted the other exchange produces a certain amount of competition, yet we are obliged to admit that the rate is fixed by the commission based upon certain elements they are required to consider.

Representative HUDDLESTON. At the present time we have proceeded in matters affecting public utilities on the theory that there would be and is competition. You propose now by this bill to recognize the fact that there is no possibility of competition under present economic and social conditions?

Mr. MacKINNON. That is really our theory.

Senator CUMMINS. In the instance mentioned by Mr. Graham, you do not think the Interstate Commerce Commission could regulate the rates for telephone service in Danville, Ill., do you?

Mr. MacKINNON. No, sir.

Representative GRAHAM. In connection with that matter, Senator, I might say this: Has not the Interstate Commerce Commission been recognized as having some power over intrastate railroad service?

Senator CUMMINS. Yes; over intrastate business done by interstate railroads.

Representative GRAHAM. It might apply to a telephone company, also, might it not?

Senator CUMMINS. I do not think so.

Representative GRAHAM. Where is the distinction?

Senator CUMMINS. The law now provides, so far as railroads are concerned, that here must not be any unjust discrimination against interstate commerce or against persons or localities engaged in interstate commerce. In order to give the Interstate Commerce Commission jurisdiction over what is conceded to be the State rate, it must be found that that State rate does unjustly discriminate against interstate commerce. Now, the telephone business is quite different from the railroad business. A railroad State rate may discriminate against interstate commerce, but as to a telephone rate it would be pretty hard to establish that connection. I think it is possible to establish a connection between an exchange rate in a State and interstate rates so that it can be said it discriminates; but it never has been said that a local telephone rate, no matter what it is, unjustly discriminates against interstate commerce. In that respect there is a wide difference between the operation of a railroad and the operation of a telephone.

Senator POMERENE. I think that is all.

Senator CUMMINS. Mark you, I do not make this objection at all as to those States that have regulatory commissions. After they pass favorably upon an application to consolidate telephone companies, that application may then come up to the Interstate Commerce Commission. While I may be a little illogical about that, yet that is the situation. But where there is no such regulation in a State, it seems to me an assumption of power that we have not got to ask the Interstate Commerce Commission, which has authority only over interstate business, to approve a consolidation of companies which, essentially, are doing a local business. I do not believe it would afford you any protection at all in such an instance.

Mr. MACKINNON. Would it not afford whatever protection is needed under the Federal law; that is, to the extent that the Federal law does apply to the small amount of interstate business that a company does?

Senator CUMMINS. If you consolidated that part of your company that does interstate business, I quite agree with you. But that is not what you want.

Senator POMERENE. Their consolidation will have to be in entire harmony with the local laws, for instance, of your own State.

Senator CUMMINS. Yes.

Senator POMERENE. As far as the interstate character of the business is concerned, the power will be conferred on the Interstate Commerce Commission to give authority.

Senator CUMMINS. So far as interstate business is concerned, there is no objection; there can not be any.

Senator POMERENE. Telephone companies, if they do consolidate, must settle the question themselves as to whether the consolidation of intrastate business is legal or not. That is all, Mr. MacKinnon.

Senator POMERENE. Mr. Goff is the next witness. He is both a lawyer and a banker.

STATEMENT OF MR. F. H. GOFF, PRESIDENT OF THE CLEVELAND TRUST CO., CLEVELAND, OHIO.

Senator POMERENE. Will you please give your residence, your business, and your connection, if any, with the telephone companies.

Mr. GOFF. I live in Cleveland. I am president of the Cleveland Trust Co., and in no way connected with any telephone interests, and never have been, other than perhaps 15 years ago was related to a firm that represented occasionally both companies, both the telephone companies, but for 15 years, I should say, I have in no way been related with any of them.

Senator POMERENE. You mean with a law firm?

Mr. GOFF. With a law firm; yes, sir.

Senator POMERENE. Now, you have read this bill?

Mr. GOFF. Yes, sir.

Senator POMERENE. And are familiar with its provisions?

Mr. GOFF. Yes, sir.

Senator POMERENE. Now, in your own way, Mr. Goff, will you state for the benefit of the committee what your views are with regard to the merits of the bill?

Mr. GOFF. Well, it has seemed to me, gentlemen of the committee, for many years that the maintenance of a dual telephone system in a locality was uneconomic, wasteful, and more or less of a public nuisance. I have at different times, purely from a standpoint of what seemed to be good citizenship, endeavored to interest some of our public bodies, notably the chamber of commerce and to some extent the municipal authorities, in bringing about a consolidation of the interests in Cleveland.

Of course, from the standpoint of convenience of the subscribers, from the standpoint of economy to the subscribers, if one system can furnish the service, and efficient service, at proper cost, a single system is greatly to be preferred to a dual system.

From the standpoint of a municipality it has always seemed to me wasteful to permit two companies to erect separate pole lines on the same street, tear up the pavement for laying the conduits.

I think that is about all that I can say, Senator. Perhaps that is all that is expected of me in volunteering to come down here, and I believe that I am expressing the opinion practically unanimously of Cleveland in saying that they would welcome such legislative action, either by Congress or the State authorities, as would permit of the merger of the telephone interests in our city, and I believe that is true throughout the State.

Senator POMERENE. Well, you think, do you not, in addition to the service, that it would benefit those who are interested financially in the financing of the proposition?

Mr. GOFF. I do.

Senator POMERENE. In other words, one system would require very much less of capital and could be more readily financed than if there were two systems?

Mr. GOFF. Two systems are wasteful and uneconomic.

Senator POMERENE. You have referred to the telephone poles. The same would apply to the telephone wires that would encumber the streets?

Mr. GOFF. Yes, sir.

Senator POMERENE. And to the instruments used by the subscribers?

Mr. GOFF. True.

Senator POMERENE. Now, as you have given a good deal of thought to this, will you please state in your own way what the objections are to the consolidation?

Mr. GOFF. I think in the earlier years, Senator, the objection arose from a fear that without competitive conditions the service might be less efficient and the cost of the service increased. We have come, in my home city, to look upon regulatory bodies who control the service, the cost of service of public utility companies, the Interstate Commerce Commission, or our public utilities commission with a feeling that they have been too drastic in some of their regulations. The public utilities are suffering, as we all know, from lack of earnings, which makes it impossible for development of practically any utility in the section of the country that I live in.

I might say that I know of almost no resident of my city that would not welcome a merger of the telephone service, providing always there can be lodged in the Government proper power to regulate both service and cost; and that I believe we have in the commissions, both local and Federal.

Representative COOPER. Mr. Chairman, may I ask Mr. Goff a question?

Senator POMERENE. Yes.

Representative COOPER. I believe I appreciate the situation you have in Cleveland, for I think we have the same thing at Youngstown, Ohio. Now, if this bill becomes a law, do you think it will be a hard proposition to get this consolidation?

Mr. GOFF. I do not. I do not.

Representative COOPER. Do you think it will take place?

Mr. GOFF. Yes, sir.

Representative COOPER. That question may be answered a little later on.

Mr. GOFF. I think the financial interests would rather make it compulsory, and I might say that as a banker I am not related in financing to either the Bell or the Independent.

Representative COOPER. You think it would be possible then to get a consolidation, Mr. Goff?

Mr. GOFF. I do; yes, sir. I would hope so, at least.

Representative HUDDLESTON. Mr. Goff, I didn't quite understand your answer that you just gave Mr. Cooper. You said something to the effect that the financial interests would exert pressure to bring about this consolidation.

Mr. GOFF. No, not pressure. They would decline to become interested in the flotation of securities issues under a dual system where there was permissive legislation by the Government to consolidate. I suppose there have been many millions of dollars lost to investors in telephone securities. These gentlemen will know better than I, but my recollection goes back to what I call the Everett Moore times in Cleveland.

Representative HUDDLESTON. Does that relate to new financing, or to the extension of securities already issued?

Mr. GOFF. Public confidence in security issues of any kind has been shaken in the last few years, and I don't believe—

Representative HUDDLESTON (interposing). Well, I mean this: The refusal of the financiers to extend further credits, or something of that kind, that you speak of, does your statement as to their attitude on the matter apply as to future extensions of credit, or the further carrying of credit? Does it refer to new financing, or to the extension of securities already issued?

Mr. GOFF. I think I would be quite frank about that. If the two companies in our city have the right to consolidate, I believe the financial interests would feel that it was the economic thing for them to do so, and if the Independent Telephone, with perhaps forty or more thousand subscribers were wanting to put out an issue of bonds or preferred stock, to increase their capacity, I think it would not be looked upon favorably, nor do I think that the Bell financing would be looked upon favorably. They would say to them: "Gentlemen, it seems to us the economic thing for you to do is to get together."

Representative HUDDLESTON. Do the same bankers ordinarily finance both companies, both interests?

Mr. GOFF. I doubt if the bankers finance to any great extent either company. The public finances them.

Representative HUDDLESTON. They are financed through bankers?

Mr. GOFF. Well, they are financed through issue houses rather than bankers, I would say. The securities are sold to the public, and are put out by the issue houses, in New York and Boston, largely as to the Bell.

Representative HUDDLESTON. This attitude that you refer to would be the attitude of the issue houses, largely?

Mr. GOFF. The attitude of the issue houses would be that they would not be inclined to underwrite large issues; they would be reluctant, I will put it that way.

Representative HUDDLESTON. Are they ordinarily handling the securities of these supposedly competing concerns?

Mr. GOFF. The same houses, do you mean?

Representative HUDDLESTON. Yes.

Mr. GOFF. No, I think not.

Representative HUDDLESTON. Would they be moved to that attitude by public consideration wholly? Considerations of economy?

Mr. GOFF. Considerations of profit to themselves, I think would influence them. But it is not only the initial profit that the issue houses look to. It is how the securities stand up under stress.

Representative HUDDLESTON. There is more profit to the issue house where there are a number of separate companies, and where the credit is not of the very best, than if there was simply a single concern, like the American Telephone & Telegraph Co.

Mr. GOFF. Yes; I suppose that is true. It multiplies the number of issues and increases the demand for capital.

Representative HUDDLESTON. And the less well known the borrower is, of course, the higher interest he has to pay.

Mr. GOFF. Quite likely to be so, yes; quite likely to be so.

Representative HUDDLESTON. So there is no consideration of profit that would cause the issue houses, as you have termed them, to refuse to deal with issues of the independent concerns, where they had the power to consolidate or to sell out to the American Telephone & Telegraph Co.?

Mr. GOFF. I think the high-grade issue houses look to how the securities would stand up in bad weather. Will their customers derive a profit, or sustain a loss?

Representative HUDDLESTON. You think the sentiment among people of that kind, then, is in favor of general consolidation?

Mr. GOFF. Doing the thing in a most economical way with the least waste. You are wasting capital now.

Representative HUDDLESTON. And that they would prefer to see the American Telephone & Telegraph Co. own all of these telephone systems?

Mr. GOFF. No; I don't think it makes any difference to the public whether the American Telephone & Telegraph Co. owns all of these systems.

Representative HUDDLESTON. I did not refer to the public. I referred to these issue houses.

Mr. GOFF. No; I don't think the issue houses are concerned with that. A single system in any community will command the same financial support, whether it be Bell or independent.

Representative HUDDLESTON. The same logic as applies to the community would apply to the country as a whole, would it not?

Mr. GOFF. Yes.

Representative HUDDLESTON. So that if consolidation in the community is desirable, a nation-wide consolidation would be desirable also?

Mr. GOFF. Well, I would say only consolidation where there exists competitive systems. That is what I understand the bill undertakes to reach.

Representative HUDDLESTON. The witness who preceded you said there were no competitive systems, as I understand.

Mr. GOFF. We have competitive systems in Ohio—in Cleveland, Columbus, Toledo.

Representative HUDDLESTON. You have two competitive systems?

Mr. GOFF. Yes; we have two competitive systems, and I think they compete with each other; if they don't compete in the cost of service they do compete in the matter of efficiency of service, to see which company can render the best service. It is a question of rendering the best service, putting in the most modern switchboards, etc.

Representative HUDDLESTON. I think Senator Pomerene suggested that the competition was as to which could make it the worst, and I will say that my experience has been that the telephone service has been far from efficient. If there is any telephone efficiency, or has been any telephone efficiency since the war, I have not had the pleasure of coming in contact with it.

Mr. GOFF. It is not as efficient as before the war, but I will say that in Cleveland both systems have held up pretty well.

Representative HUDDLESTON. Is there any difference in the prices they pay their employees?

Mr. GOFF. I couldn't tell you that, sir.

Representative HUDDLESTON. Just in what way do they compete in service?

Mr. GOFF. Well, as to the character of the switchboard, the general efficiency of their working system, management, and all that. I suppose, if you please, that the independents are to-day more progressive in the installation of automatic telephone systems. I remember Mr. Fish, when president of the Bell Telephone Co., told me some 10 or 12 years ago that an automatic system could not work successfully in a town having a population of over 10,000. He thought it had been demonstrated up to that point. The Independents are competing with the Bell in installing automatic service; they are able to finance that service far in advance, as I know it, of the Bell interest. I think that is real competition. We are quite as much concerned with getting service as we are with low cost.

Representative HUDDLESTON. The chief competition between large users of phones just at this time is in getting the money to operate them in the sale of their securities.

Mr. GOFF. Well, possibly that may be true; yes, sir.

Representative COOPER. Mr. Goff, this bill does not deal so much with competition, does it?

Mr. GOFF. I beg your pardon?

Representative COOPER. This bill does not deal so much with competition; it just permits a consolidation?

Mr. GOFF. As I read the bill it simply makes permissive the consolidation of two different companies operating in the same field, and I suppose the only need for coming to Congress for that power is to relieve the company and the officials from the penalties imposed by the antitrust act.

Representative COOPER. And you believe that this consolidation would result in a great economic saving?

Mr. GOFF. Very great; very great. Not only that, but it does avoid a great nuisance by having one system; it is a great nuisance to have two telephone systems. We have, I suppose, a thousand employees in the bank, and we have to equip every desk with two telephones, practically doubling the cost, and then when the telephone rings you are not quite sure which bell to answer.

Representative COOPER. Not only your business institutions and manufacturing industries, but a large number of the private homes in Cleveland to-day have to have two telephones?

Mr. GOFF. I think so.

Representative COOPER. Which, I suppose, means a great expense to the people of Cleveland?

Mr. GOFF. Yes; it means a great expense to the people of Cleveland, and then you don't get the same service or facilities.

Representative HOCH. Just one question, Mr. Chairman, to see if I understand this situation. I understand that as far as the intrastate business is concerned there is now no legal difficulty in securing merger, at least in the States which have regulatory bodies, but that in view of the fact that these exchanges will do a percentage of business, great or small, which is interstate, through their toll lines, capital will not cooperate in these mergers because of the fear of running afoul of the Federal law; that is the thing that brings you here to Congress for what you call permissive legislation?

Mr. GOFF. I think there is that principle. Whenever there is any doubt or suspicion cast upon a security issue, of course, the banking houses, the issue houses, are reluctant to take them on, and the public are reluctant to buy them.

Representative HOCH. In other words, as Senator Cummins has stated, whatever may be the fact as to the jurisdiction of Congress to in any sense sanction or assume to sanction the merger of local concerns, there is that fear on the part of capital that even in a local merger it may be held to be related, through the toll line, so related as to be in some sense interstate business, to such an extent that there would be Federal jurisdiction, and that business interests would find that they had violated the law without having any intention; therefore they seek some legislation which will make them safe beyond any question of the violation of the Federal law.

Mr. GOFF. It has to be put that way, otherwise the purchasing syndicate would not know respecting the invalidity of their issue until perhaps the Supreme Court had passed upon it, and many years might elapse before that could be accomplished.

Senator POMERENE. Are there any further questions to be asked of Mr. Goff?

Now, let me suggest to the gentlemen who are here that we have on this list of witnesses Mr. James T. Daniels, Mr. E. L. McKelvey, Mr. Todd, Mr. Benton, and Mr. Stevens, and we hope to be able to finish this hearing, if we can, by noon, unless there is some objection to it. I know the Senators will have to go to their Chamber and I assume the Congressmen desire to go to the House, but we will proceed.

Who shall be the next witness?

Representative HAWES. Mr. Senator, I want Mr. Reber, of St. Louis, who represents possibly one of the largest competitive companies in the United States, and whose wires extend not only through Missouri but through Indiana, Illinois, and into Kansas, to be heard, if the number of witnesses is to be limited. And it is a good illustration for this bill, too, because the Bell has a subscription there of 156,000, and the Kinlock of 84,000.

Senator POMERENE. Well, unless the gentlemen interested have some other plan about it, we will proceed in the order that we have them here.

Representative GRAHAM. That is entirely agreeable.

Senator POMERENE. Mr. Daniels.

**STATEMENT OF JAMES T. DANIELS, GENERAL SECRETARY
COLUMBUS CHAMBER OF COMMERCE, COLUMBUS, OHIO.**

Senator POMERENE. Will you state your name and your business and place of residence, Mr. Daniels.

Mr. DANIELS. James T. Daniels, general secretary Columbus Chamber of Commerce, Columbus, Ohio.

I am here at the request of the board of directors of the Columbus Chamber of Commerce. I am not connected with any telephone company. And I am very glad that somebody other than the telephone people is being heard. I represent an organization in excess of 2,500 members. The board of directors sent me here in the interest of this bill, on account of a questionnaire sent to our membership,

without any suggestion, but asking: "What can the chamber of commerce do for the benefit of the community?" A sufficient number of replies, in order to make one general plank of our program, were: To work for an elimination of two competing telephone companies, and our organization is interested that such a condition may be brought about for the general welfare of the community.

I think that is all I have to say, unless you desire to ask some questions.

Senator POMERENE. Does any member of the committee desire to ask any questions? If not, that will be all, Mr. Daniels. Thank you.

Mr. GOFF. Mr. Chairman, I was asked by the secretary of the Cleveland Chamber if I would file with the committee a resolution passed by the Cleveland Chamber of Commerce.

Senator WILLIS. I have quite an accumulation of resolutions that I will ask to file also.

Senator POMERENE. Very well, we will do that later.

Mr. GOFF. This is the resolution adopted by the board of directors of the Cleveland Chamber of Commerce, April 11, 1921 [reading]:

Whereas the elimination of dual telephone service and the unification of the service of competing telephone companies is in the public's interest, and Whereas such unification of telephone service can only be secured by a consolidation or merger of competing companies, and

Whereas a resolution has been introduced into the Eighty-fourth Ohio General Assembly memorializing Congress to amend present laws or enact new ones so as to permit dual telephone service to be eliminated: Therefore, be it

Resolved by the Cleveland Chamber of Commerce, That the Ohio General Assembly be urged to adopt Senate joint resolution No. 24 to the end that the unification or merger of competing telephone companies may be furthered.

Be it further resolved, That copies of this resolution be transmitted to the Governor of Ohio, the author of the joint resolution; Senator A. W. De Weese, the chairman of the Public Utilities Committees of the Senate and the House of Representatives; and the Senators and Representatives of Cuyahoga County.

Senator POMERENE. The next is Mr. E. L. McKelvey, of Youngstown.

**STATEMENT OF MR. E. L. M'KELVEY, OF THE G. M. M'KELVEY
CO., YOUNGSTOWN, OHIO.**

Senator POMERENE. Will you give your name, Mr. McKelvey, your business, and place of residence?

Mr. M'KELVEY. My name is E. L. McKelvey; I am a member of the firm of the G. M. McKelvey Co., department store, Youngstown, Ohio. We have a medium sized department store, and I would like to say right here—

Senator POMERENE. Don't be so modest.

Mr. M'KELVEY. Well, it is medium sized.

Senator POMERENE. One of the largest.

Mr. M'KELVEY. Well, I am just a common, every-day merchant, and we have just a medium sized department store; we cover about 7 acres, and we employ about 800 people.

I am interested in this thing as a business man and as a citizen. We have in our department store 106 departments. Among those departments we have a large grocery department, a meat department, and a bakery department. It becomes necessary for us, under the dual system, to have both phones. Of the Bell phone we have

16 trunk lines and 53 stations, and of the automatic we have 13 trunk lines and 53 stations.

I have been opposed to this dual system for its annoyance, and not only have I been personally opposed to it in our business, but I have taken the matter up with a number of our customers, and they seem very much dissatisfied. Now, for instance, you take our town, it is growing to the point where we have to have much suburban territory taken in, and I have found that the ladies say when they go out there, in moving out to those different suburban parts, they find it very inconvenient where they are required to have either the Bell or the Automatic; that they can not get connections with their friends. We have oftentimes customers calling in to our operators on the Bell and asking them if they won't transmit the message the other way; transmit it for them.

And I have taken the trouble to take the matter up with our mayor as to how he stood on the question, and he said he was for it. They have had a great deal of trouble there in Youngstown about the telephone system, and he said he was for it. The matter was taken up further in the council, and they unanimously were for the unification of the system.

I am chairman of our retail merchants' board, representing 139 different merchants, and at our meeting the matter was presented to them, and they unanimously were for the unification of the systems.

Senator POMERENE. Do you know of any sentiment to the contrary in your town?

Mr. McKELVEY. I do not. In canvassing, as far as I could as a layman, I could not find anyone who is against the unification of the system. I am going to say that what is true of our own store is true of like stores. And in other lines. For instance, if a lawyer opens up an office he is required to have two telephones. And the same is true of the doctor, real estate man, or insurance man, or the small store; they are obliged to put in two telephones, which is very expensive, and if there is one thing the business men are trying to do, it is to cut out all unnecessary expense, and our expense has practically doubled by having a dual system.

That is all I believe I have to say.

Senator POMERENE. Do any of you gentlemen care to ask Mr. McKelvey any questions? If not, that will be all. Thank you.

Mr. Cole.

STATEMENT OF MR. C. D. M. COLE, ASSISTANT VICE PRESIDENT OF THE AMERICAN TELEPHONE & TELEGRAPH CO., NEW YORK CITY.

Senator POMERENE. State your name, place of residence, and your occupation, and your interests, if any, in this subject.

Mr. COLE. C. D. M. Cole, assistant vice president of the American Telephone & Telegraph Co. I am here at the request of the chairman of the House committee, Mr. Graham. Mr. MacKinnon has said to you all that I can say. I can subscribe to everything he said, except that his methods are better than the Bell; I can not subscribe to that.

I don't think I can add anything to it, gentlemen. I think that this provides a method for accomplishing what the public wants.

Senator POMERENE. Well, let me ask you: Do you think there will be any difficulty in bringing about this consolidation, assuming—

Mr. COLE (interposing). Do you mean in Ohio?

Senator POMERENE. Well, anywhere throughout the country.

Mr. COLE. No, I don't think so. I think the public demands it. I think that in localities where there are two telephone companies the public demands it, and it will be done. Mr. Goff has covered that point, I think.

Senator POMERENE. Well, I think that states my view about it, at least from my observation.

Mr. COLE. The public will not stand a duplication in the telephone service.

Senator POMERENE. Now do you know of any objections which are being urged against the consolidation?

Mr. COLE. Only that it will produce a Bell monopoly. That is the only one that I have heard.

Representative HAWES. A what?

Mr. COLE. A Bell monopoly. I don't believe that there is anything in that. I don't see how that is possible. We have just about half as many central offices as the independents have. Most of our stations are in the eastern part of the country, in the large cities, as Mr. MacKinnon stated. We have got enough to handle as it is.

Senator POMERENE. We have these regulatory bodies in all of these States, save the three to which Mr. MacKinnon referred.

Mr. COLE. Yes; save the three.

Senator POMERENE. So that that situation could be pretty well controlled.

Mr. COLE. Why, absolutely secured. In this bill you have got to get the State authority, and then the Interstate Commerce Commission. I can not see any objection to it at all. We have no objection to the bill whatever. We are not proponents of the bill; we are not here advocating it.

Representative GRAHAM. Mr. Chairman.

Senator POMERENE. Mr. Graham.

Representative GRAHAM. I would say very frankly why I asked you to be here, Mr. Cole. I knew these other men were all independent telephone men, and I didn't want to be in the position of going on the floor of the House, or any of us on our subcommittee, with a bill that possibly would be opposed on the floor of the House by some one who thought that your particular interests were in jeopardy.

Now, I want to ask you something. Do you know whether there has been any movement on foot, or whether there is now any movement on foot, for a general consolidation of your interests and the independent interests of the country?

Mr. COLE. There is no such movement. I know that.

Representative GRAHAM. Never been talked over?

Mr. COLE. Never been talked over at all. Why, years ago, it was; yes. You remember when Mr. Vail first came in there was some idea as that, but that has all been knocked out; there is no such understanding at all.

Representative GRAHAM. Is there any possibility of it?

Mr. COLE. I don't believe there is the slightest possibility of it. I don't see how it is possible.

Representative GRAHAM. Why?

Mr. COLE. Well, Mr. MacKinnon said that the same men that started in the independent business still owned it, even men that began 20 years ago, and they have got a good thing and are not going to give it up. Besides, it is too vast a business for any one company to control, it seems to me.

Representative GRAHAM. What is the capital invested in the Bell system approximately? What are your holdings worth, do you think?

Mr. COLE. Well, I should think about \$750,000,000.

Representative GRAHAM. And the independent?

Mr. COLE. That I don't know. I couldn't answer that.

Representative GRAHAM. Does anybody know? Any of you gentlemen?

Mr. MacKINNON. \$350,000,000.

Representative GRAHAM. About half the Bell valuation.

Mr. COLE. Yes.

Representative GRAHAM. That is all I wanted to ask of him, Mr. Chairman.

Senator POMERENE. These gentlemen say that you have \$1,250,000,000 in your Bell system.

Mr. COLE. I don't think that is true. We have an authorized capital stock of \$731,000,000, I think it is. And that is not all issued yet.

Representative GRAHAM. I was speaking more of the actual valuation.

Mr. COLE. Oh, the actual valuation is very much greater. I should think it is a third more. Mr. Vail always figured it at that.

Representative GRAHAM. Which would bring it about to what they suggest, \$1,250,000,000.

Mr. COLE. It might be that about, as to actual valuation.

Representative GRAHAM. And, Mr. MacKinnon, was the value you gave actual valuation or stock?

Mr. MacKINNON. Valuation.

Representative GRAHAM. That is all.

Senator POMERENE. Anything further?

Representative HUDDLESTON. Mr. Cole, consolidation, of course, would necessitate the production of a great deal of new capital. It would have to be financed, in other words.

Mr. COLE. Yes.

Representative HUDDLESTON. And the chief difficulty just at this time in that is the extremely high rates of interest involved?

Mr. COLE. Yes.

Representative HUDDLESTON. So this would be a very poor time to consolidate vast interests of this kind?

Mr. COLE. Yes; I think it would. I don't think there is any danger of any vast consolidation.

Representative HUDDLESTON. One other question I want to ask you: Does your company use the automatic telephone at all?

Mr. COLE. It is beginning to use what they call a semiautomatic, which is partially manual and partially automatic; semiautomatic.

Representative HUDDLESTON. Are there any particular reasons why you should not use it?

Mr. COLE. No; I think not.

Representative HUDDLESTON. I presume it is protected by patents? Mr. COLE. Yes.

Representative HUDDLESTON. And the patents are not held by your interests?

Mr. COLE. Well, there are several patents on the automatic. We hold patents on our own automatic, and then the Automatic of Chicago has other patents. There is not what you call a basic patent for the automatic as there was for the telephone.

Representative COOPER. May I ask you a question, Mr. Cole? Is there any saving in the use of the automatic; that is, in the operating expense?

Mr. COLE. I think so. You see you cut down a lot of operators.

Representative COOPER. Yes; I knew that.

Mr. COLE. Have you any further questions, Mr. Chairman?

Senator POMERENE. Are there any further questions that any of you gentlemen wish to ask Mr. Cole? If not, that will be all, Mr. Cole.

We will now hear from Mr. Todd.

STATEMENT OF J. E. TODD, GENERAL COUNSEL FOR THE OHIO STATE TELEPHONE CO., COLUMBUS, OHIO.

Senator POMERENE. State your full name and place of residence, and business relation to these companies.

Mr. TODD. J. E. Todd. I am an attorney. I live at Columbus, Ohio. I am at present the general counsel for the Ohio State Telephone Co. For many years the firm of Daugherty & Todd were general counsel of that company, but since Mr. Daugherty has become the Attorney General of the United States the firm is dissolved, and I am holding that position.

Now, may I proceed and discuss this bill briefly?

Senator POMERENE. Proceed.

Mr. TODD. Senator Cummins suggested a while ago that there was a twilight zone in the law concerning the jurisdiction and control of the Interstate Commerce Commission over telephone companies. I do not profess to know just the limit of the jurisdiction and authority of the Interstate Commerce Commission on this subject. Senator Cummins attempted to, and did very clearly, set out the reasons why the Interstate Commerce Commission might have control over intrastate railroad rates, for the reason that the intrastate rates might reflect on the interstate rates. It seems to me that the same condition exists as to telephone rates.

There are, of course, two sources of income for telephone companies: The local exchange rates and the toll or long-distance rates. It might very easily happen that a telephone company operating both an exchange and a long-distance service might reduce its exchange service to a point below profit and make up the difference by an increase in its toll or long-distance service, so that the same situation with respect to interstate telephonic service would exist as you refer to with respect to railroad service or rates.

Now, I say I don't know just where the authority of the Interstate Commerce Commission over local telephone rates ceases or begins. But I think I do know this, that this bill does not extend that authority one iota.

Senator POMERENE. Well, the jurisdiction is rather a matter of degree than of kind. For instance, it is estimated that on the railroads the interstate commerce is about 90 to 95 per cent of the haul. But I take it that in the telephone business those figures would be substantially reversed.

Mr. TODD. Yes; in the telephone business those figures would be reversed; that is true, I think.

Senator POMERENE. But the local question is probably about the same, is that your opinion about it?

Mr. TODD. Possibly, yes. It is a difference in degree, but not in kind.

Senator CUMMINS. Mr. Todd, there is another phase of it that you ought to consider in attempting to establish a parallel between the telephone company and the railroad company. When the railroad bill that was passed last year came over from the House it contained a provision that if the State rates created an undue burden upon interstate commerce, that then the Interstate Commerce Commission should have the authority to set aside those rates and make new ones. The Senate found itself unable to agree to that proposition. So the words "Undue burden" were stricken out of the bill and in their stead—or there were inserted—they may have been there originally, I have forgotten whether they were or not—but in their stead there were inserted the words "unjustly discriminatory and prejudicial."

Now, I have never been able myself to give my adherence to that school of thought on this subject which claimed that simply because the State rates did not raise their fair share of the revenue, therefore the Federal authority could be superimposed upon the subject. Personally I think the Supreme Court has never gone to that extent, and I don't believe it ever will. So there is that difference. If it were a mere question of determining whether State rates raised their share of the revenue of a company that did both an interstate and intrastate business, then, of course, all State rates come in to the jurisdiction of the Federal authority, and can be put under the Interstate Commerce Commission. Otherwise the commission could not perform its duty.

But do you think that simply because a company that is doing both an interstate business and an intrastate business does not derive its fair share of the cost of operation and the reward to capital, and so on, from the State rates, that upon that fact alone the Federal authority can take possession of the subject, and the Interstate Commerce Commission can make all State rates?

Mr. TODD. No; I don't really think so, Senator, but I don't know. I don't know what the Supreme Court may think about that question some day. I don't know what the Interstate Commerce Commission may think about it when such a question comes before them. I think I can see that a situation might arise such as I suggested, where the local exchange rate would injuriously affect the interstate rate—the toll rates.

Senator CUMMINS. So far as the revenues are concerned to the company.

Mr. TODD. So far as the revenues to the company are concerned, yes. But I think I can see a danger that the Interstate Commerce Commission may claim the right to readjust those rates so as to

relieve the interstate rate of an undue burden, and I think I can see that the courts might sustain that position, but I don't know. That is part of the twilight zone.

Senator CUMMINS. Of course you appreciate the conclusion that can be drawn from that; at least the conclusion that I have always drawn is that if we reach that point, then there is no such thing as State regulation.

Mr. TODD. I see that very clearly, and I think we have been drifting that way in the last few years quite rapidly.

Representative GRAHAM. For instance, Mr. Todd, let me suggest a case that occurred to me while you were talking. Suppose a certain interstate rate was established. It has to go through an exchange in a certain town; it has to pass through that exchange. Now, the local exchange puts on a toll charge which makes that interstate charge entirely impossible. In your judgment, then, the Interstate Commerce Commission might regulate that charge in the local exchange?

Mr. TODD. I say it is possible that the commission might claim the right to do that, and the court might sustain it in it.

Representative GRAHAM. It seems to me that it might in some instances.

Mr. TODD. But the point I was trying to arrive at is this: That this bill, as I understand it, does not attempt to define the limit of the jurisdiction of the Interstate Commerce Commission, nor does it attempt to extend its authority. It provides in the first paragraph of the bill that an application may be made "by any telephone company or companies subject to this act." Now, just what telephone companies may be subject to the act to regulate interstate commerce now I don't know.

Senator CUMMINS. Well, that is pretty easily answered. Any telephone company that does an interstate business is subject to the act.

Mr. TODD. Unquestionably.

Senator CUMMINS. So far as its interstate business is concerned?

Mr. TODD. Yes.

Senator CUMMINS. But not otherwise?

Mr. TODD. But not otherwise.

Senator POMERENE. Senator Todd, let me make this suggestion as to the way this matter appeals to me, that total authority over telephones is State authority plus congressional authority. Now, then, you are seeking by this bill to invoke both authorities, if it is necessary, to bring about this consolidation, and why is it necessary for us to determine exactly the dividing line between the State authority and the Federal authority?

Mr. TODD. That is exactly my thought, that it is not necessary.

Senator CUMMINS. Well, the difficulty is, Senator, that this bill does not require the exercise of State authority in every instance. I said originally that so far as the bill requires the joint exercise of authority by the States and by the Federal Government, I have no objection to it at all. In fact, I think it is very desirable. But I am hesitating about attempting to give to the Interstate Commerce Commission jurisdiction to pass upon these applications for consolidation when they come from States which have not exercised their authority.

Senator POMERENE. Well, but even in that case, Senator, let me make this suggestion, that assuming that there is no State tribunal which is vested with this power, we are simply by this bill—if I properly construe it—giving such power as the Congress may have. Now, if your telephone companies in Iowa are purely—or to the extent that they are—intrastate, no authority which we could be conferring here upon the Interstate Commerce Commission could control that situation. So that I don't see the local difficulty.

Senator CUMMINS. Senator, you don't state the case exactly as I have it in my mind yet. There are a good many States that do not give their regulatory commissions authority to set aside their antitrust law or the Federal antitrust law.

Senator POMERENE. Of course I don't know about the situation in your State, and you do, Senator, and therefore my statement may not be quite accurate. But if you have a State antitrust law and it relates to intrastate business and intrastate property, how can we control that situation?

Senator CUMMINS. We can not.

Senator POMERENE. I don't think so either.

Senator CUMMINS. We can not, and therefore this bill can afford protection in a great many instances.

Senator POMERENE. Yes; I think that is true.

Senator CUMMINS. This bill proposes—to use a common phrase—to repeal, or give the Interstate Commerce Commission authority to repeal, the antitrust law with respect to certain consolidations. Now, I think that we have the right to give the Interstate Commerce Commission the authority to give immunity at least against the operation of the antitrust law, so far as interstate business is concerned.

Senator POMERENE. I agree with you.

Senator CUMMINS. But we can not go any further than that.

Senator POMERENE. I think you are right.

Senator CUMMINS. And I think the bill ought to be confined to that.

Representative GRAHAM. Well, Senator Cummins, isn't that what the bill really means? The bill proceeds:

The commission shall also have power and authority, to the extent hereinafter provided, upon application by any telephone company or companies subject to this act.

Now, in other words, doesn't that limit the following language to a company or companies properly under the jurisdiction of Congress?

Senator CUMMINS. But every telephone company that does an interstate business is subject to the act.

Representative GRAHAM. Yes.

Senator CUMMINS. Now, the Interstate Commerce Commission can not at the present time regulate interstate telephone rates, and a great many of these independent companies do an interstate business, as well as the Bell system.

Mr. Todd is a lawyer of wide experience, now, and suppose your statutes in Ohio have not given to your public utilities commission the authority to give your own companies immunity against the operation of an antitrust law in your own State, if you have one, and I assume, that being a forward State, you have?

Mr. TODD. We have a very stringent antitrust law.

Senator CUMMINS. Now, then, we give the Ohio company the authority to apply to the Interstate Commerce Commission, and it does apply, and the Interstate Commerce Commission grants the authority that you propose.

Mr. TODD. We never could go to the Interstate Commerce Commission.

Senator CUMMINS. Do you think that that will give you the authority to combine or consolidate in Ohio?

Mr. TODD. Absolutely not; and this bill does not attempt to confer such authority.

Senator CUMMINS. Well, I am speaking of practically. If you have an antitrust law, how can you get rid of that in Ohio?

Mr. TODD. We can not get rid of it, except by action of the State of Ohio.

Senator CUMMINS. The legislature of that State? By action of the Legislature of the State of Ohio?

Mr. TODD. Yes; by action of the Legislature of the State of Ohio.

Representative HAWES. Senator Todd, the plain intent of this bill is to assist a consolidation where it is thought advisable. It removes the Federal restrictions, and where a State restriction remains, that can only be done by the legislature of the State?

Mr. TODD. That is all.

Representative HAWES. But it is an opening wedge where it is considered desirable by the community or by the companies, to consolidate in one line; that is the effect of this bill?

Mr. TODD. That is the effect of it.

Representative HAWES. That is all there is to it.

Mr. TODD. Now, in Ohio we have the Valentine antitrust law, as Senator Pomerene knows very well, which would prohibit a consolidation or merger of the telephone companies in Ohio.

Senator POMERENE. It is practically the Sherman law applied to the State.

Mr. TODD. It is practically the Sherman law, yes. Now, it would do that if it were not for the fact that at the session of the legislature where you presided over the Senate and I had the misfortune to be a member, we adopted a statute which authorized specifically a consolidation and merger of telephone companies. Now, in Ohio we have removed the restrictions of the antitrust laws of the State, but there still stand over us in preventing the consolidation and merger of telephone properties in Ohio the Federal antitrust laws, and it is that restriction that we are seeking to remove by this bill.

Senator CUMMINS. I see no difficulty about Ohio, and I have not seen any difficulty about the application of this bill to Ohio.

Mr. TODD. None at all. Now there may be some States where they will not be able to operate under this bill because of restrictions of State laws, and the lack of a State authority. But those are cases that we can not help. We have attempted in this bill, though—and I had something to do with the preparation of it—to provide a bill that will give us relief, and as much relief as is possible to do in a single bill, and I don't think we have gone an inch farther than to give relief from Federal antitrust legislation in cases where companies that come under the Interstate Commerce act now desire to merge or combine their properties, and I don't think we interfere with State practices or State laws or State conditions at all. I know it was not

intended to do that, and I don't think the bill does do that. But it does reach a situation where there is grave doubt now as to the legality of certain transactions, because of the restrictions of Federal law. I know that I can not advise the Ohio State Telephone Co., as its counsel, I can not advise the officers of that company that if they are doing just purely an intrastate business that they can consolidate or sell out their property to the Bell, or do anything else they want to. I would be afraid of the penalties standing over them fixed by the Sherman antitrust law. But under this bill that restriction, that danger, that threat is removed, and that is all we are seeking to do. And we tried to make it so general and comprehensive that wherever there is a telephone company that would be subject to restrictions and impositions of the Federal antitrust laws they can be obviated under this bill.

Representative HOCH. Mr. Chairman, I would like to ask a question right on that. Now, of course, as has been said here, this applies and can apply only to companies subject to the act, which, of course, are companies doing an interstate business, and it provides that the petitioner may file application for authorization to acquire the property of the other company. Now let me give you a concrete illustration from my own State. Here is the Bell Co. and an independent company operating in my little town. The Bell Co. could be an applicant under this law, because it does an interstate business.

Senator POMERENE. Could be what?

Representative HOCH. The Bell Co. could be an applicant under this law because it does an interstate business. It is a company subject to this act. But this local company, this independent company, organized solely by local capital, I can not see how in any sense it can be considered, prior to the time of consolidation, to in any sense be doing an interstate business. Therefore in its present status as an independent company it has no right, under this law, to be an applicant. Because it is not subject to this act. Now if the Bell Co. wants to acquire the property of the independent company it could come to the Federal jurisdiction, because it could be an applicant under the terms of this law. But suppose the independent company desires to acquire the local business of the Bell Co., in what way, under this language, can that local company be an applicant? Mr. TODD. I think in either case both companies would have to be applicants.

Representative HOCH. Well, but there is no provision, as I read it here, for a company which desires to sell. This solely and simply provides for a company which desires to purchase. Now suppose the Bell Co. desires to sell, couldn't you extend this language so that the Bell Co., which in the nature of things is the only one that can be the applicant, could be permitted to sell?

Mr. MACKINNON. Being familiar with your home situation, Mr. Hoch, let me say that that is a local company which you speak of; has no interstate business; they have no toll lines running out of the State; have no toll connections which will enable them to get out of the State. Therefore they are not subject to the act to regulate commerce, and they would only have to comply with the State laws, coming before your Kansas Public Utilities Commission.

Representative HOCH. Yes; but wouldn't the Bell Co., if there is any fear of the Federal antitrust law, hesitate to go into a merger

even though the other party to the merger is not within interstate commerce?

Mr. MACKINNON. Not if they are going to sell to the local company. Representative HOCH. That is the legal question I am asking, whether this bill covers such a local situation, where the local company which could not be an applicant, could nevertheless buy from the Bell Co., which is under the jurisdiction of the law.

Mr. TODD. May I answer that for you? If the companies, parties to the transaction which you refer to, are not now subject to the Federal law, they are not made so by this bill, and they can proceed whether this bill becomes a law or not. If the transaction is subject to Federal law now, then with this bill enacted they can proceed under the provisions of this bill and remove the restrictions of the Federal law. Now that is all this bill seeks to do.

I don't know whether the incident case that you give would come under the present Federal antitrust legislation or not. If I represented either company in that transaction I would take the precaution to advise them to proceed under this bill, and be sure that they were not proceeding in violation of the law.

Representative HOCH. Well, but therein would be the very difficulty, if I may interrupt you, because you have made no provisions, as I read it, for proceeding in that sort of an instance. Would you advise the Bell Telephone Co., which had a proposition to sell to the local company, that there was no question about their immunity under the Federal antitrust law, or if you would advise them that there was some danger in that consolidation, then would you not amend this to provide for sale as well as for acquisition?

Mr. TODD. I think it is broad enough now to meet all conditions.

Representative HOCH. Well, I am asking for information. Possibly I have not read this law correctly. But as I read the first section, to which you call attention, the applicant must be one who seeks to purchase.

Mr. TODD. There can not be a sale, of course, unless there is also a purchase.

Representative HOCH. Yes; but the applicant must be either the purchaser or the seller.

Mr. TODD. Well, now, if your company that desires to become the purchaser is not subject to the Federal law now, and can make this transaction, why they do not need to act under this bill, but if they are subject to it, then they can act under it, and I think in a case of that kind good practice would suggest that both of them join in a joint application for authority.

Representative HOCH. Of course that is based upon the contention, which may be entirely correct, that the sale of the property involved in no sense any danger under the Federal antitrust law.

Mr. TODD. I don't know whether it does or not, there. I am trying to impress upon the committee that I don't know how far the authority of the antitrust statute goes involving the companies, but I have got a bill here which I think would enable any company under any situation to act without incurring the liabilities of the Federal antitrust laws.

Representative HOCH. Just one more question, Mr. Todd. I don't want to delay this, but I want to ask this question: If that be true, what harm could there be for the purposes of this act, or for the gen-

eral public, to provide there in line 10: "To authorize and approve the acquisition or the sale by a telephone company of the whole or any part of the property?"

Mr. TODD. I don't see that there would be any objection to that, except when you start to amend a bill you have got to study it pretty carefully to know what the effect of the amendment would be, what effect the amendment would have on all parts of the bill. At first glance I can not see that there would be any, but there might be some that would occur upon a closer study.

Now, I have been somewhat desultory in my talk, and I think I have covered about all the points I had in mind to speak of.

If there is anyone who has any questions I would be glad to answer. Senator POMERENE. Are there any further questions that anyone wishes to ask Mr. Todd? If not, that will be all. Thank you.

Could you suggest a time this afternoon that we could take this up, Mr. Graham, and resume, if we can not go on now?

Representative GRAHAM. I think, gentlemen of the House subcommittee, that we ought to finish this as soon as we can, this joint hearing, because to-morrow we start in on the soldiers' reorganization bill, which will keep us busy all the time.

Senator CUMMINS. I see Mr. Benton is here.

Senator POMERENE. Can we make arrangement to continue now, or do you wish to go to the House now?

Representative GRAHAM. I suggest that we continue with the hearing.

Senator POMERENE. Very well, we will go right on with the hearing.

Representative GRAHAM. It would be well to conclude if we can.

Senator POMERENE. We will now hear Mr. Benton.

STATEMENT OF MR. JOHN E. BENTON, GENERAL SOLICITOR, NATIONAL ASSOCIATION OF RAILWAY AND UTILITIES COMMISSIONERS, 724 EIGHTEENTH STREET NW., WASHINGTON, D. C.

Mr. BENTON. Mr. Chairman and gentlemen of the committee, I am the general solicitor, located in Washington, of the National Association of Railway and Utilities Commissioners.

I asked for an opportunity to make a brief statement this morning, not with the idea of appearing either as a proponent or an opponent of the bill, but rather with the idea of stating to what extent it has been called to the attention of the various commissions that make up the association. I will say that some little time ago the representative of the independent association here in Washington, Mr. MacKinnon, called on me with Mr. Stevens, and presented a proposed draft of a bill. As the bill was then drawn it would have provided for a presentation of an application to State commissions having jurisdiction for authority to consolidate, and for the transmission of the result of the action of the State authorities to the Federal commission, but would have left the Federal commission free to make such order as it saw fit, without regard to the action of the State authorities.

I stated then that I thought that such a bill as that was certain to draw opposition from State commissions which had been authorized to act in this matter, and which had been acting upon consolida-

tions in their own States. Upon inquiry I learned that so far as they were able to state they had met with no impediments or objections from the various commissions in the different States. It was stated that the purpose of this bill was to secure immunity from the provisions of the Federal antitrust act.

Later on the bill in its present form, or substantially in its present form, was presented to me, and upon its introduction Mr. MacKinnon brought over to me a copy of it, and I distributed it to the several State commissions, sending a bulletin, which I will read, to each commission in the country. The bulletin is as follows:

MAY 3, 1921.

CONSOLIDATION OF TELEPHONE COMPANIES.—BULLETIN NO. 27, 1921.

To the State Commissions:

S. 1313, "A bill to amend section 407 of the transportation act."

This is a bill introduced by Senator Willis, of Ohio. Congressman Graham, of Illinois, has introduced a like bill in the House. It would insert into section 5 of the interstate commerce act, as amended by the transportation act, a new paragraph to be known as 7(a). Copies of the bill are distributed herewith to each commission.

The amendment proposed is asked for by the Independent Telephone Association. Representatives of the association have been to see me various times about it. They state that their prime purpose is to enable consolidation of telephone properties free from the restraints of the antitrust laws. Paragraph 8, referred to in the bill, authorizes consolidations free from all "restraints or prohibitions by law, State or Federal." As originally proposed, the bill would have provided for filing the application in the first instance with the State regulatory body, but would have left the Federal commission full power to make such order as it saw fit thereafter. Upon my suggestion that such a bill would be likely to meet considerable opposition from commissions exercising jurisdiction, the bill was changed to its present form.

It will be noted that, as now proposed, the application for consolidation must be made to the State regulatory body having jurisdiction, if any, and if approved by such body, and not otherwise, may then be presented to the Federal commission, but if there is no State regulatory body having jurisdiction the application may be made in the first instance to the Federal commission.

I call this bill to the attention of the several commissions and particularly of the members of the committee on State and Federal legislation; with the request that I be at once advised if any objection to the bill in its present form is perceived.

JOHN E. BENTON,
General Solicitor.

Senator POMERENE. In the three States where there are no commissions to whom did you send the bulletin?

Mr. BENTON. There are commissions in every State except Delaware.

Senator POMERENE. Some one has said here that there are none in Texas, Delaware, and Iowa.

Senator CUMMINS. There is a commission in Iowa, but it does not deal with the telephones.

Mr. BENTON. I sent it, not to Delaware, but to all other commissions. That was only a few days ago. It will be noted there has not been enough opportunity for the commissions at a distance to communicate with me, and it would be considerate, and I think doubtless in accord with your wishes, to refrain from any report on the bill until such time as I have had a reasonable time to hear from the commissions, if any should decide to interpose an objection.

Senator POMERENE. Let me be a little impertinent. I realize the force of your suggestion as the attorney representing these commissions, and there is no objection to that at all. But now, just let us

hear what objections, if any, Mr. Benton, the lawyer and citizen, has to this bill.

MR. BENTON. Senator, I think that consolidations of telephone companies, where they are occupying the same territory, are ordinarily desirable. I served on a State commission for some years, and we had full jurisdiction with respect to granting permission to consolidate, and fix the terms of consolidation.

Representative GRAHAM. What State was that, Mr. Benton?

MR. BENTON. The State of New Hampshire. And no application for consolidation was ever made to us that was refused. I was interested on being informed by Mr. MacKinnon, the other day, that so far as he was informed no State had—well, as I put the question to him it was this: What reasonable application for consolidation have you known of in any State which has been refused, and he said none. He said, "We are not seeking to get away from the regulation of this matter by the several States, but we are seeking to escape the restraints of the Federal antitrust law."

My judgment is that the telephone is a natural monopoly, and while I am not speaking now directly of the legal question which you asked me—I will come to that in a moment—I merely say that so far as I am concerned I have no hostility to consolidation as a general proposition, nor do I think that the commissions of the country have.

That indicates, in a general way, my personal view about it, and my knowledge, so far as I have knowledge, of the attitude of the commissions generally.

So far as the first paragraph is concerned, I think it is absolutely right. It provides for an application to the State commissions, and thereafter to the Federal commission. I believe that both are necessary in every instance where it is proposed to consolidate competing properties, for every telephone that sends an interstate message is subject to the act. Maybe there might be some dispute about that, and a very able attorney might say that he did not know how far the Federal jurisdiction extended, and in this possibly it is a little uncertain. But every good lawyer would say, as the witness who preceded me said he would say, that he would advise his clients to comply with the provisions of this bill for consolidation, if consolidation was intended, and of course he would.

Now, the interstate commerce act provides that the provisions of this act—I am reading now from section 400 of the transportation act, which amended section 1. [Reading:]

(1) That the provisions of this act shall apply to common carriers engaged in—
(c) The transmission of intelligence by wire or wireless from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory—

The Territories are subject to the jurisdiction of Congress, anyway—or from any place in the United States through a foreign country to any other place in the United States, or from or through any place in the United States to or from a foreign country, but only so far as such transportation or transmission takes place within the United States.

Now, every message that goes across a State line into a local company's office, and goes to a subscriber there, is an interstate message, and although the lines of that property may be wholly within the State, that transmission is interstate transmission and is subject to

the provisions of the act and, so far as that transmission is concerned, that company is subject to the act and must come in as a petitioner if it is proposed to act under the provisions of this bill. So that to secure relief under the Federal antitrust act, I think they must come here, and I think that the Federal Government does not have now, and I trust it will not have after the Supreme Court decides the Wisconsin case, the right to regulate every activity and every action of a State corporation, merely because it does some interstate business. So I say that the first part of the act, which provides for getting the authority of the State and the authority of the Federal Government, seems to me to be just right.

The second part of the act I never have expressed an opinion upon. I have not made any objection to it to Mr. MacKinnon. When he talked with me about it the last time before sending out this bulletin, and when he brought me the act, that effect of it, which I now speak of, had not occurred to me. I say that in frankness and fairness to him so that it will be observed by him and by the committee that I am not now suggesting something which I suggested at the time we were talking together. If I had suggested it then, it is possible that the second part of the act would have been so framed as to meet the suggestion I am now making. At any rate, I should have done it, and I am now calling attention to it, as I did in the bulletin which I sent to the State commissions. It will be noted there that I called attention to the fact that the bill in States where there is no regulatory body having jurisdiction over these organizations, authorizes the presentation to the Federal commission and provides that upon securing authority from the Federal commission the consolidation may take place, free from the restraints of the antitrust laws or any other laws, State or Federal.

Now, I think it has been overlooked that that is, in fact, what it does. The last part of the act will do more than the gentlemen sitting around the board here have indicated that they understood the intent of it to be, and more than the witnesses who have appeared here for the telephone companies have any wish for, according to statements made thus far. It suspends, not only the Federal antitrust act, but it suspends any State laws that there may be forbidding consolidation. I call attention to that provision of it. It escaped the attention, doubtless, even of those who drafted the measure. It does not set out in the bill the specific language, but attempts to make use of certain provisions with reference to railroads which are already in the act. It provides that—

In a case instituted before it by either of the above methods—

That is, either through the State commission, where there is a State commission, or directly, where there is no State commission—if the commission shall find that the proposed transaction will be in the public interest, it shall enter an order approving and authorizing the acquisition, and thereupon the provisions of paragraph 8 of this section shall extend to the telephone companies affected by such order.

Paragraph 8 there referred to reads as follows—it is found in section 406 of the transportation act. [Reading:]

(8) The carriers affected by any order made under the foregoing provisions of this section and any corporation organized to effect a consolidation approved and authorized in such order shall be, and they are hereby, relieved from the operation of the

"antitrust laws," as designated in section 1 of the act entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, and of all other restraints or prohibitions by law, State or Federal, in so far as they may be necessary to enable them to do anything authorized or required by any order made under and pursuant to the foregoing provisions of this section.

Senator CUMMINS. What section are you reading?

Mr. BENTON. I am reading section 8, on page 29.

Senator CUMMINS. That is section 407, then, instead of section 406. You said section 406.

Mr. BENTON. That is right, Senator; I thank you.

Mr. GRAHAM. Paragraph 8?

Mr. BENTON. Paragraph 8, as it appears in the print of the transportation act.

Answering the Senator's question, as to what I say about it as a lawyer, I see a great objection to Congress attempting to set aside the antitrust laws of Texas, for example. Texas is an empire by itself. That is beside the point, however. It is a sovereign State of the Union, and has a right, I think, to exercise its constitutional rights and powers free from the enactments of Congress interfering with or in any way attempting to restrict them. In view of our political customs and the whole genius of our institutions, Congress ought to refrain from attempting to impose its will with respect to intrastate operations in the several States of the Union.

What I understand is desired is to provide legislation here which shall enable the companies desiring to consolidate, to consolidate free from the restraints of the Federal antitrust law.

That second part, it would occur to me, might well be recast as a separate section, and provide that where a State does not provide a regulatory body to exercise the power of releasing for any State from the restraint of State laws, the application may be made to the Federal Commission, and the Federal Commission may make an order authorizing a consolidation free from any restraints of the Federal antitrust laws, but not attempting, by force of the Federal statute, to annihilate the State laws.

Senator POMERENE. Your objection then could only apply to the States of Texas, Delaware, and Iowa, I assume?

Mr. BENTON. I am not familiar with the situation. My impression is that it will be found that there are some other States that have not as yet given to their local commissions authority to authorize consolidations.

Whether in those States there is anything in the law that would prevent consolidation, I do not know. My impression is that there is something that would prevent consolidation in Texas. I do not know that there is anything that would prevent consolidation in Iowa. My thought is that it is entirely right and proper that the Federal Government should provide the means whereby companies desiring to consolidate may do so upon receiving authority from some proper board free from the restraints of the Federal antitrust laws, leaving the companies to receive such authority as is provided for by the several States from those States. My thought is, if there is a State that has forbidden consolidation, it is better to leave the companies to take it up with that State, then for the Federal Government to compel by this act.

Representative GRAHAM. Let me ask a question at this place: You called attention to paragraph (8). Paragraph (8), of section 407, where it attempts to relieve from the operation of the antitrust laws, means, of course, Federal antitrust laws, doesn't it?

Mr. BENTON. I assume that is what it means.

Representative GRAHAM. It could not mean State laws. Now, you may be right about this, and if you are, of course the bill ought to be rewritten, but I am curious to know just how you arrive at that conclusion. The latter part of this bill says:

In a case instituted before it by either of the above methods, if the commission shall find that the proposed transaction will be in the public interest, it shall enter an order approving and authorizing the acquisition, and thereupon the provisions of paragraph (8) of this section shall extend to the telephone companies affected by such order.

That is, that under the provisions of paragraph (8) they are exempted from the operation of the Federal antitrust laws; now, how does that interfere in any way with the operation of the State antitrust laws?

Mr. BENTON. Because in paragraph (8) it also says:

And of all other restraints or prohibitions by law, State or Federal.

Representative GRAHAM. Oh, I see.

Mr. BENTON. I do not believe that is what they are aiming at. I do not believe it is necessary to have it, unless there might be two or three States where they would like to have it.

Representative GRAHAM. What do you have to say about the validity of that new act itself?

Mr. BENTON. This entire act?

Representative GRAHAM. Yes.

Mr. BENTON. I will say that that will not be admitted by some States until the Federal Supreme Court has said it is proper.

Representative GRAHAM. The same argument that applies to telephone companies applies to railroad companies, doesn't it?

Mr. BENTON. In my judgment, it ought not to be in that law in that form. Where a State, for example, authorizes a railroad to build from A to B within the State, I question whether the Federal Government ought to attempt to say to the State that notwithstanding its attempt to restrain that corporation from consolidating with some other, perhaps, competing line, nevertheless it shall be consolidated.

But that is in the law with respect to rail carriers. Rail carriers do differ in important respects from telephone lines, and my thought is that even if there was a situation existing when the Esch-Cummins bill was passed which led the Federal Congress to think that it was good policy to exercise that authority as to railroad companies, it is a totally different proposition if you come to deal with the laws of the State of Texas, for example, or other States as to telephone companies.

Representative GRAHAM. It is not different in principle, is it?

Mr. BENTON. I have answered that I do not think it is different, but the facts are so different that it might make a difference in legislative action. It is true that a slight percentage of the telephone business is interstate; it is true that a very large percentage of the rail business is interstate. But when you have got the principle established it applies everywhere. For example, the Long Island Railroad is an intrastate railroad on the island of Long Island; less

than 5 per cent of its business is interstate. Nevertheless, every passenger rate—and it is mainly if not wholly a passenger railroad—every passenger rate is fixed by the Interstate Commerce Commission, and that without regard to the return being made on the investment under section 15 (a), and fixed, too, because the commission thought they ought to be raised the same percentage they had fixed them in ex parte 74—I mean, without any idea as to the reasonableness of those particular rates.

Construing what the Congress said in section 13 (4), the commission has raised franchise fares within municipalities in Ohio on what is strictly a street railway business—except that the railway happened to be hitched up from town to town—in the exercise of jurisdiction based on a finding that the State rates were too low. They fixed them higher. That encroached upon the jurisdiction which you have heretofore allowed the States to exercise.

Representative GRAHAM. Then, Mr. Burton, if this bill were restricted to States having a public utility commission and having jurisdiction over the matter, and restricted to those States alone, then, in your judgment, it would be a proper exercise of congressional judgment?

Mr. BENTON. It would be entirely proper, and, Mr. Congressman, I should say that I see no reason why you should restrict it that far, provided you do not attempt to set aside State laws.

Representative GRAHAM. That could be limited in this bill by a proviso, I imagine.

Mr. BENTON. Of course, it could be easily taken care of by a slight amendment. As it is now drawn, attempting to use the words already in the act with reference to railroads, it specifically attempts to or does set aside State laws. There is a specific provision in Texas—I have not heard from Texas yet, and do not know what—

Mr. TODD (interposing). When you do hear from it you will find they have a statute requiring consolidation.

Mr. BENTON. I have in mind their antitrust act.

Mr. TODD. The latter act would repeal that as to telephone companies.

Mr. BENTON. There may be such a statute. But I do not believe there is one exempting trusts and monopolies. The reason I happen to know something about that constitutional provision is because I had occasion to examine it in connection with railroad rates, and my impression is that it does apply.

But I want to make clear that I have distributed the circular, and thus far I have not received any communication that any commission is opposed to it. I should not have gone into this as fully if the Senator had not asked me my objection to it, or what objection I had to it as a lawyer. My objection to it is that it is an attempt to set aside State laws.

Senator CUMMINS. Mr. Benton, you may have overlooked one very important distinction in section 407 between "control" and "consolidation." It may be material here, and I think the record ought to be probably kept straight. Paragraph (1) and paragraph (2) of section 407 relate particularly to pooling of earnings or division of earnings, or to control through lease or purchase of stock. But it is expressly provided in section 2 in these words: "or in any other manner not involving the consolidation of such carriers into a single system for ownership and operation."

Now, when we come to paragraph (4) of that section, you will note that it is provided that it became the duty of the commission, immediately upon the passage of the act, to prepare and publish a plan of consolidation—consolidation as distinguished from control through lease or stock ownership, and that plan must be a competitive plan; it must not eliminate competition as between carriers. And when you come then to the paragraph that you quoted or paragraph (c) it is provided:

(c) Whenever two or more carriers propose a consolidation under this section—

Now, that is not the community of interest which might be brought about by paragraphs (1) and (2)—

they shall present their application therefor to the commission, and thereupon the commission shall notify the governor of each State in which any part of the properties sought to be consolidated is situated, and the carriers involved in the proposed consolidation, of the time and place for a public hearing.

And so forth. Then the power of the commission is expressed in this way:

If after such hearing the commission finds that the public interest will be promoted by the consolidation and that the conditions of this section have been or will be fulfilled, it may enter an order approving and authorizing such consolidation, with such modifications and upon such terms and conditions as it may prescribe—

And so forth. The law expressly provides that these consolidations must be in harmony with, and in furtherance of the plan, adopted by the commission, and that plan is a competitive plan. Now, you do not understand that that is sought by this bill?

Mr. BENTON. No. Of course, that is an additional safeguard which the Congress adopted with respect to railroads.

Senator CUMMINS. Well, under the terms of this bill, if consolidations are sought, they would have to be upon a competitive plan.

Mr. BENTON. Yes.

Senator CUMMINS. Now, I take it that none of those who were interested in this matter want to see any such qualification as that.

Mr. BENTON. Senator, it is to get away from the results of competition in this particular line that many of these consolidations are taking place. Generally speaking, the commissions grant authority, if applied to, with public approval, because the people have begun to feel the burden of carrying two telephones to reach the people that they desire to reach in a single community.

Senator CUMMINS. Yes.

Mr. BENTON. And, of course, as I said in the beginning, telephones are a natural monopoly, because—

Senator CUMMINS (interposing). Personally, I am in sympathy with that thought to eliminate all competition in a given locality.

Mr. BENTON. Yes.

Senator CUMMINS. There may be a certain, broad, comprehensive competition in the standard of service; but you seemed to assume that this bill could be applied accurately to a railroad case. I do not think it can be.

Mr. BENTON. No; I don't know as I made myself clear. I merely referred to the fact that it sought to use some of the language which you used about railroads, and that it resulted in accomplishing something that you did not aim at. What they are here for is asking immunity from the Federal antitrust laws, but actually to bring that

about as now provided might result in the Interstate Commerce Commission making a certificate which would operate to set aside the constitutions of some States.

I do not know that that matter will draw opposition from a single State commission. If a commission is not given jurisdiction over telephones, they may say it is not their job. But entirely aside from that, if there was not a person suggesting any opposition to it, I think Congress ought to keep clear the distinction between relief from Federal laws and relief from State laws and constitutions. I do not believe the telephone companies are going to have any difficulty, as I said to Mr. McKinnon and Mr. Stevens, in getting authority to consolidate from the States. I do not know of a single case where they have been refused that authority. But if there is a State or two, it is a good deal better to let the people of that State change their laws, than for the Federal Government to change them for them.

Representative HUDDLESTON. Mr. Benton, I imagine that a good many of these telephone companies have obtained franchises from municipalities, and in many instances they are required to assume duties, by the municipalities, such as, for illustration, to furnish a certain number of telephones free of charge for the city authorities. There are many other burdens which they have assumed in taking these franchises. Now, what effect would this statute have on a thing of that kind?

Mr. BENTON. I can not see that it would have any effect. If a company is combined with another, I should think the contract would be binding upon the consolidated companies.

Representative HUDDLESTON. Yes; where there is a purchase, and where there is a consolidated company. In other words, it authorizes a sale of their lines, exchanges, etc. And under this statute, will the purchaser take them freed from those obligations?

Mr. BENTON. That is a serious question which I would rather not pass on. I should hesitate to say they do not.

Senator POMERENE. The grant would be subject to all the conditions of the franchise.

Representative HUDDLESTON. It may not take all the franchises, but merely the physical property of the company.

Senator POMERENE. If that is true, the new company would not have a right to operate.

Representative HUDDLESTON. It may have a franchise of its own; it may operate under its own franchise, and it may not need the franchise of the old company. I happen to know a case of that kind.

Senator POMERENE. If that were true, would that not be taken care of by the local utilities, or the companies themselves, when they come to make a contract?

Representative HUDDLESTON. I do not understand that. Senator POMERENE. I understand in all the States except the three referred to there is a public utility commission; don't you think they would take care of that, to see that the localities were cared for?

Representative HUDDLESTON. That might be so. Senator POMERENE. Isn't it pretty safe to say they will take care of that matter?

Representative HUDDLESTON. I think not; I think we ought to take care of that.

Representative GRAHAM. Isn't that entirely a State matter? Representative HUDDLESTON. Not at all, any more than the whole thing is a State matter.

Representative GRAHAM. How does the authorization or order waive the Federal antitrust provision, which is all this purports to do; how does that affect the contractual relations between the public and the company? I have some cases in my own State in mind, but there the courts have held—

Representative HUDDLESTON (interposing). I answered Senator POMERENE that I did not think it would be safe to leave it to the public utilities commissions. It seems to me it might affect them seriously, unless we made a specific provision.

Representative HAWES. Can any acts of this Congress either suspend or lessen the rights of the company in its franchises?

Representative HUDDLESTON. Yes; section 408 of the transportation act of 1920 pretends to do so. Whether it does or not, I do not know.

Representative HAWES. I do not believe it does. Senator POMERENE. Are there any further questions? [After a pause.] If not, we will hear Mr. Stevens.

(Mr. Benton later submitted the following letter in support of his testimony.)

MAY 11, 1921.

HON. ATLEE POMERENE,
United States Senate, Washington, D. C.

DEAR SIR: At the hearing before the joint committee on S. 1313 I was asked for an expression of my opinion as to the power of Congress to authorize consolidations in defiance of State laws. In support of what I then said I would call attention to the opinion of the United States Supreme Court in *Louisville & Nashville Railroad v. Kentucky* (161 U. S. 677, 701).

In that case the validity of section 201 of the Constitution of Kentucky, forbidding consolidation of competing railroads, was in question, the proceeding being one in which the State sought an injunction to prevent the acquisition of a competing line. It was claimed that the section operated as an infringement upon the power of Congress over interstate commerce. I quote the opinion in part:

"But little need be said in answer to the final contention of the plaintiff in error that the assumption of a right to forbid the consolidation of parallel and competing lines is an interference with the power of Congress over interstate commerce. The same remark may be made with respect to all police regulations of interstate railways. All such regulations interfere indirectly, more or less, with commerce between the States, in the fact that they impose a burden upon the instruments of such commerce and add something to the cost of transportation by the expense incurred in conforming to such regulations. These are, however, like the taxes imposed upon railways and their rolling stock, which are more or less, according to the policy of the State within which the roads are operated, but are still within the competency of the legislature to impose. It is otherwise, however, with respect to taxes upon their franchisees and receipts from interstate commerce, which are treated as a direct burden. There are certain intimations in some of our opinions which might, perhaps, lead to an inference that the police power can not be exercised over a subject confined exclusively to the commerce by the Federal Constitution. But while this is true with respect to the commerce itself, it is not true with respect to the instruments of such commerce. * * *

"It has never been supposed that the dominant power of Congress over interstate commerce took from the States the power of legislation with respect to the instruments of such commerce, so far as the legislation was within its ordinary police powers. Nearly all the railways in the country have been constructed under State authority, and it can not be supposed that they intended to abandon their power over them as soon as they were finished. The power to construct them involves necessarily the power to impose such regulations upon their operation as a sound regard for the interests of the public may seem to render desirable. In the division of authority with respect to interstate railways Congress reserves to itself the superior right to control their commerce and forbid interference therewith; while to the States remains the power to

create and to regulate the instruments of such commerce, so far as necessary to the conservation of the public interests.

"If it be assumed that the States have no right to forbid the consolidation of competing lines, because the whole subject is within the control of Congress, it would necessarily follow that Congress would have the power to authorize such consolidation in defiance of State legislation—a proposition which only needs to be stated to demonstrate its unsoundness. * * *

"While the constitutional power of the State in this particular has never been formally passed upon by this court, the power of State legislatures to impose this restriction upon the general authority to consolidate has been recognized in a number of cases. * * *

"The power to forbid such purchase or consolidation with competing lines has been directly upheld in a large number of cases in the State courts, in some of which cases a violation of the commerce clause was suggested and in others it was not. * * *

"In conclusion we are of opinion. * * *

"That * * * section 201 of the constitution of 1891 was a legitimate exercise of the police power of the State, and forbade such consolidation, at least so far as such power remained unexercised."

If the reporter's transcript has not already gone to the printer, I should be pleased to have this letter made a part of the hearing.

Yours, very truly,

JOHN E. BENTON, *General Solicitor*.

**STATEMENT OF MR. FREDERICK C. STEVENS, COUNSEL OF
THE UNITED STATES INDEPENDENT TELEPHONE ASSO-
CIATION, ST. PAUL, MINN.**

Mr. STEVENS. Mr. Chairman and gentlemen of the committee I represent the United States Independent Telephone Association as counsel.

It seems to me the easiest way is to briefly state the history of the antitrust law and interstate commerce law as applied to the telephone industry, and that will answer many queries that you gentlemen have asked.

The original reference to telephones in the interstate commerce laws was in the interstate commerce act of 1910, in which it covered telephones and telegraphs. The Interstate Commerce Commission at once instituted an investigation to ascertain the scope of the act, and in some sort of an order, I think about 1911 or 1912—Mr. Benton may remember more clearly than I—held that the original provisions of the commerce act respecting telephones applied to sections 1, 3, 15, and 20 of the old interstate commerce act. And this committee—I say this committee, because you gave particular attention to it—in framing your transportation act of 1920, endeavored to preserve the telephone act exactly as it was, not to diminish it in any way, or to particularly extend it. You endeavored to preserve the act as it was so far as telephones are concerned, and the provisions of those sections should apply as formerly. Section 2 prohibits rebates. Section 3 now provides against discriminations. Section 15 refers to route rates, and section 20 to accounting.

Now, under that last provision the Interstate Commerce Commission instituted a system of accounting for classes A and B in 1913. That is to say, that section 20, providing for accounting, should apply to all companies coming under the provision of the interstate commerce act and classified as A and B; and in 1915 or 1916 the Interstate Commerce Commission extended that order to class C, and a requirement for a report from class D companies so that all the telephone companies which would be included in those four

classes would come under the act by an order of the Interstate Commerce Commission authorized by the old interstate commerce law.

Now, soon after the 1910 telephone act was passed, an action was brought, I think in Pittsburgh, relating to the extent of the power of the Interstate Commerce Commission over exchange rates, and the Interstate Commerce Commission investigated the matter with some care, and I remember that I handed the opinion to Senator Cummins, in which it held that the interstate commerce act did not apply to local exchange rates, and I think that has been followed by some kind of a decision in New York. Hasn't it, Mr. Cole?

Mr. COLE. I think it has.

Mr. STEVENS. And the last act did not extend that, so that there are two things established; the companies classed as A, B, C, or D, are under the Interstate Commerce Commission, and that exchange rates are not under the jurisdiction of the Interstate Commerce Commission.

Now, having those matters clearly in mind, let us consider the other acts and activities under the commerce law, popularly known as the Sherman antitrust law. Consolidations were freely made, and all sorts of property were bought and sold until about 1912, when some sort of a consolidation was made on the Pacific coast, and the Department of Justice brought suit in the United States court in the district of Oregon, and the matter was quite strongly contested, in the case of the United States against the A. T. & T. Co., until the A. T. & T. Co. consented to a decree, and a decree was entered by confession, holding that this company, in this suit, which was a company of some size which had been doing mostly a local business but a small interstate business—that that consolidation did come under the provisions of the Sherman antitrust law. That decree is in force to-day and is the basis of the action of the Department of Justice. Therefore the Department of Justice assumed jurisdiction over consolidation of properties that come under the interstate commerce act, and they have already defined how it has included various telephone companies but not private exchanges.

Now, then, since 1914 the Department of Justice has assumed, and continues to assume, and now controls or has laid down a policy as to the acquisition of property of one telephone company from another, so that it is not now safe for any telephone company to proceed to consolidate or to merge or acquire any property until it goes to the Department of Justice and gets some sort of a dispensation so that it can proceed. It has been the case since 1914. The result is that there is some sort of a—not a bureau, but a sort of a branch that attends to that business. I think Senator Cummins was going to ask for some sort of a report on that matter.

Senator POMERENE. Sort of a lawmaking ministry within the Department of Justice.

Representative GRAHAM. Is that about the same as the price-making body on sugar?

Mr. STEVENS. I can not say about that.

Representative GRAHAM. The Department of Justice has undertaken, and does pretend, to say when these things could be done and when they could not be done?

Mr. STEVENS. Yes, sir.

A VOICE. He is wrong about that.

Senator CUMMINS. That is substantially about it; it might be differently phrased. It has undertaken to advise anybody that comes to it whether that would be in violation of the antitrust law.

Mr. STEVENS. Thank you, Senator, that is a more accurate statement of it.

So you gentlemen can see how these things are working out, so that it is becoming necessary for these matters to be determined by law and not by any order of the Department of Justice, and locate the authority somewhere, in some tribunal that will lay down an authoritative rule that will say what can and what can not be done. That much is history.

Our companies ran against this condition: When it was necessary for economic and financial and traffic reasons to consolidate, in some of the States—and one place in the State of Mr. Reber—there are some communities where the rivers or mountains are not the natural boundaries, where one community extends into another State, and there is a large class of companies in such communities where the telephones are under the jurisdiction of the commission. Now, for economic or financial reasons some changes must be made in order to give the people telephonic service—and they must have telephonic service in this day and age—and in order to get it some action was necessary. This bill has been drafted to meet the troublesome situation between the States and to comply with the laws of the Nation. In examining the laws of the States, we found an infinite variety of situations.

In section 2 you will notice it provides: "having jurisdiction over the premises"; that means over the subject of consolidations. In examining the statutes we found that, I think 26 States, maybe 28, had jurisdiction over consolidations. I think that all except one State has a commission of some kind or another, but about 20 of them have no jurisdiction over the consolidation of telephones. That is why we thought it was necessary to have that last paragraph:

In case there is no such commission or other regulatory body having jurisdiction in the premises, any telephone company desiring such acquisition may make application therefor to the commission for its authority and approval thereon.

The law in some States confides to the municipalities the power to authorize consolidation. In Delaware, the city of Wilmington, for instance, has that authority. I think it is the same in Texas. The home rule cities there have authority to pass on that.

A VOICE. All cities.

Mr. STEVENS. All cities have authority to pass on consolidation, and other States have somewhat the same condition. So that no hard and fast rule could be laid down.

Senator POMERENE. That jurisdiction, I take it, is exclusive in the cases to which you refer?

Mr. STEVENS. Yes; so I understand.

Now, Mr. Benton was entirely right. We do not intend to trench on the power of the States in any way. I think one of the best illustrations of what may occur in the telephone traffic between the States and the United States is afforded by what you gentlemen did in passing the act for the return of the telephones to the owners. You remember there was a provision that the rates made by the Postmaster General should continue until by proper authority it was ordered otherwise. Those rates and that provision has worked

out satisfactorily, and there has not been one single instance which has gone to the Interstate Commerce Commission, and in no single instance has the Interstate Commerce Commission assumed any jurisdiction. The Interstate Commerce Commission has taken the normal action that the States and the companies wanted. If you gentlemen will pass some sort of a bill allowing the States to do what they please, I think if the State does not want any consolidation, it should have the right to say so.

Now, Mr. Benton was right. Some States do not allow any consolidation—South Dakota, for instance. That policy must be respected. The commission, I think, should have authority to consider an application for consolidation, and if there were any objection, as from the State of Iowa, the governor must be notified and could state to the commission the situation in Iowa, and if objected to probably that would be the end of the matter. We do not want anything of that sort extended except by approval of the local people, but at the same time there should be a general act, of general application, so that if the people of Iowa or Delaware want a consolidation they can provide for it by an act of the legislature of that State; they can observe the usual procedure, and get action under that procedure. And that is all we ask for.

Mr. Benton made the suggestion that this would attempt to affect the State antitrust laws under paragraph 8. We informed him that we have no desire, and we could not if we had the desire, affect the antitrust laws of any State. The language of section 8 in the transportation act is somewhat unfortunate so far as we are concerned. We do not want any such provision to which he objected. It would not do us any good. We do not object to it. We want home rule, so far as the policy as to telephones and the property of telephones is concerned, and the acquisition of the property of one telephone company by another. This, we think, will give the proper authority. It covers everything and gives the State an opportunity to do as it wants to do, and to do what the people want, and at the same time relieve them of the burden of the Federal statute. I have no doubt when section 8 of the Federal transportation act was framed it was intended to relate to the railroads only, and we do not want to interfere with the antitrust laws of any State. I do not think the courts would so construe it. If it be necessary to have a slight amendment—I do not think it is necessary—I call the committee's attention to page 2, line 21, after the word "section" insert "affecting the antitrust laws as defined in paragraph 8."

Senator CUMMINS. State that again.

Mr. STEVENS. After the word "section" insert "affecting the antitrust laws as defined in paragraph 8."

Senator WILLIS. You suggest this would come in after the word "section"?

Mr. STEVENS. Yes. If you want to change it it would be entirely pertinent to confine this provision to the Federal antitrust laws as they are described. We haven't any objection to it. We don't think it is necessary, but it is entirely in accord with what we want and what Mr. Benton wants, so there is no controversy between us at all.

Now, gentlemen, I think you realize the necessity for this act.

Senator CUMMINS. Why not put in the language itself instead of referring to section 8?

Representative GRAHAM. I think that is better.

Mr. STEVENS. I am just calling attention to this as an easy way to do it.

Senator WILLIS. Will you prepare an amendment embodying your ideas?

Mr. STEVENS. I will try to do that.

Senator POMERENE. Avoid all reference to section 8.

Mr. STEVENS. Now, gentlemen, I think that covers it. You realize that in the different States there is a variety of situations, and you have endeavored to meet the situation so that the States can have what they want, and the Federal law will be ready all the time so they can act if they want to.

Senator POMERENE. You have given a good deal of attention to these telephone matters; have you discovered anywhere any opposition to the general principles of this consolidation?

Mr. STEVENS. No; not to the general principles. There seems to be a hostility, or rather a feeling that there might be a monopoly created by or under it, and that, of course, the independents do not fear at all, because a large section of the country will not tolerate a monopoly, and this bill is devised so that these people can have what they want. We do not want to take home rule away from any of them; on the contrary, we want to preserve it.

Representative HAWES. Now, I understand that the Bell Co. does not object to this act?

Mr. STEVENS. So we are informed.

Representative HAWES. You are so informed?

Mr. STEVENS. Yes, sir.

Representative HAWES. And that the representatives of all the independent companies are here, and they do not object?

Mr. STEVENS. No; we want it.

Representative HAWES. In fact, you all want it for this reason: If you want to buy you can buy, and if you want to sell you can sell, subject to local and State regulations?

Mr. STEVENS. Subject to local and State regulations.

Representative HAWES. But the whole purpose of this act is simply to remove any Federal prohibition?

Mr. STEVENS. Or objection.

Representative HAWES. Against such consolidation?

Mr. STEVENS. Yes, sir.

Representative HAWES. In the beginning, 16 or 18 years ago, independent telephones came into existence as competitors in a way, against the Bell, and they have now paralleled the Bell in many communities where the communities now may prefer to have one system, instead of a dual system; that is the object of it?

Mr. STEVENS. Yes; that is the object, and more than that, I think—

Representative HAWES (interposing). That is only in interstate communication?

Mr. STEVENS. Yes; there are a number of instances—I think many instances—where the people have got to have additional service; the switchboards and the offices and all their facilities are too small, and they all cost a great deal of money. These companies can not finance themselves. It is necessary to have a larger field and a broader base for financing. That is one reason for it. Some com-

panies have not maintained their properties, or maintained the proper reserves for amortization purposes, and it is necessary to put the system on a larger and more scientific basis, and this enables it to be done.

Representative HAWES. Ultimately it will be under the local authority, or under a community or a State?

Mr. STEVENS. It is under that now. In a great majority of cases it is under the State, which runs the whole business.

Representative HOCH. Just one question. If a consolidation were desired by a company doing a wholly intrastate business with a company doing an interstate business, will you point out to me how it can be done under the phraseology of this bill?

Mr. STEVENS. The chances are, Mr. Hoch, if you go to your public utility commission you will find that it is under the jurisdiction of the Interstate Commerce Commission and that they had made reports, and in that case it would be under the jurisdiction of the commission.

Representative HOCH. How can we say it is under the jurisdiction of the Interstate Commerce Commission, when my premise involves that it does no interstate business? Leaving out of consideration now that twilight zone or uncertain zone—leaving out a company which does interstate business—how can a company doing wholly an intrastate business proceed?

Mr. STEVENS. Nearly all these report to the Interstate Commerce Commission.

Representative HOCH. It does not say it reports to the Interstate Commerce Commission.

Mr. STEVENS. But most of these companies come within the act to regulate commerce.

Representative HOCH. Does every local company now report to the Interstate Commerce Commission?

Mr. STEVENS. No; but the great bulk of them do.

Representative HOCH. Then you do not answer my question.

Mr. STEVENS. I will answer it in this way—

Senator CUMMINS (interposing). We have in our way 4,000 telephone companies. I venture to say—I do not know how many—but I think it is doubtful whether more than 15 or 20 report to the Interstate Commerce Commission.

Representative HOCH. Then I am asking, under the phraseology of this bill, how any one of those companies could be an applicant if they desired to purchase.

Mr. STEVENS. I would advise them to make proper application, or to take up their matter and apply to the State authorities, and if it came up to the Interstate Commerce Commission and they ruled they had no jurisdiction that would end the matter.

Representative HOCH. What I can not understand, as I have stated before, is why you include simply the acquisition here.

Mr. STEVENS. Because there has been some objection that we are taking too much away from the State. We wanted to guard against that. We do not want to trench any more on the State authority than necessary.

Representative HOCH. Is there any more intrenchment involved in a sale than in an acquisition?

Mr. STEVENS. No.

Representative HOCH. Then why not include it? I can not see at all how it could be an applicant under the terms of this bill; none is subject to the act unless they report to the Interstate Commerce Commission and unless they want to sell.

Mr. STEVENS. We conceived that it was broad enough to cover all the companies.

Senator POMERENE. Is there any necessity, in your judgment, for that provision?

Mr. STEVENS. No; we did not consider it so.

Senator POMERENE. For this reason, that such a company as you have indicated, and one doing intrastate business had gone along to such a point where one had practically absorbed the other, the one doing the interstate business would make the application.

Representative HOCH. This language says the applicant is confined to the one who desires to acquire. I am assuming that one wanted to sell and not to acquire.

Senator POMERENE. The one that wanted to sell, of course, could not sell unless it had a company to sell to; even if it did not act or make this application, the other company would act.

Representative HOCH. I think, Senator, you do not quite get it.

Senator POMERENE. Perhaps not.

Representative HOCH. It seems to me to be of very serious importance to this bill. To be an applicant you have to be an applicant under the terms of this bill here. What are the terms? It must be a company doing interstate business. Secondly, a desire to acquire. Under this condition I can conceive of many of these companies in my own State that do a wholly intrastate business, and none of those companies would come technically within the conditions set out as a precedent to the making of an application.

Representative HAWES. Judge, did you draw this bill?

Mr. STEVENS. Yes; in part.

Representative HAWES. Is there any objection to putting in the word "sale"?

Mr. STEVENS. I don't think there is.

Representative GRAHAM. I think the only case where Mr. Hoch's situation would have application would be in the case of a company doing no interstate business, if it wanted to sell to a company that did no interstate business, it would be prohibited from doing so.

Representative HOCH. That is the point exactly.

Representative GRAHAM. Why not make that clear by proper language?

Senator POMERENE. Let me make this suggestion, that instead of the word "sale" it should be "acquisition or disposal." There might be a disposal other than by sale; there might be a disposal by barter or trade.

Representative HOCH. Yes; anything that covers it.

Senator CUMMINS. Mr. Stevens, just a word, and I shall not inquire further. The point that I have suggested several times in one aspect or another is one that troubles me. A monopoly involves, in all good government, the power on the part of somebody to regulate; the power in the hands of somebody to fix proper rates and franchises. If we abandon the course of competition which is supposed, generally speaking, to regulate prices, we must have regulations. An application comes up to the Interstate Commerce Commission by a com-

pany which is doing an interstate business; we will say 5 per cent of its business is susceptible of regulation by the Interstate Commerce Commission, and 95 per cent of its business is only subject to regulation by the State. The Interstate Commerce Commission grants authority under this bill, and the result is a combination or a consolidation between two competing companies, the very large proportion of whose business is not subject to regulation either by the Interstate Commerce Commission or by any other authority. How can you reconcile that with the notion that where there is no competition there ought to be regulation?

Mr. STEVENS. Well, that can be done in this way, Senator: If the State authorities do not desire regulation, of course, it ought not to be forced on them. It is their province to do as they please. The Interstate Commerce Commission could entertain the application; they would be obliged to under the act; and the governor of the State would be notified, and he would come there and make this representation of the facts. If there seemed to be a case of public interest, the commission could make an order for that consolidation, and could make an order only when—it would be in the power of the Interstate Commerce Commission to make a condition, not to fix rates after that consolidation should go into effect—but provide that the consolidation should only take effect when a system of rates under the State law should be made effective. Now, that would protect the people until such time as they wanted a merger, and yet it might take effect as to the other properties that were regulated. That would be entirely legal. I discussed somewhat that situation—not the rates—with the chairman of the Interstate Commerce Commission, and he understood it in that way. It is in their power to protect the people in that way until the people themselves want the action.

Representative HUDDLESTON. Mr. Stevens, suppose a case in which a telephone company has obtained a franchise from a municipality which fixes the rates, and that company should make a sale of its physical property to some other company under this act; what effect would that have on the contract for rates?

Mr. STEVENS. I do not think the franchise would follow the property.

Representative HUDDLESTON. Undoubtedly it would not; but what position would it leave the municipality in?

Mr. STEVENS. If the municipality made its statement to the State commission, I think the State commission would do exactly as I suggested to Senator Cummins, that the Interstate Commerce Commission would approve, provided that all agreements and contracts should be made effective.

Representative HUDDLESTON. There are a great many of these commissions, and they have not the power to impair contracts.

Mr. STEVENS. Oh, no.

Representative HUDDLESTON. Therefore they would have no power or jurisdiction over that situation.

Mr. STEVENS. They could grant authority under such circumstances as would cover that situation.

Representative HUDDLESTON. Now, let us suppose a case wherein the State commission has the authority to permit the sale of this property—

Mr. STEVENS (interposing). Has authority?

Representative HUDDLESTON. Has not authority.

Mr. STEVENS. I beg pardon.

Representative HUDDLESTON. So that the initial step is taken before the Interstate Commerce Commission, then the municipality would be at the mercy of the Interstate Commerce Commission?

Mr. STEVENS. The Interstate Commerce Commission, in that case, would do exactly as I suggested to Senator Cummins, direct that it must enjoy its rights as under the old franchise.

Representative HUDDLESTON. And if the Interstate Commerce Commission should conclude that the rate was too low and confiscatory, what would be the condition?

Mr. STEVENS. It ought not to approve on that point. It ought to approve, with a proper condition.

Representative HUDDLESTON. I asked that because of your answer a moment ago as to the conditions which the Interstate Commerce Commission could attach to its consent. Do you think this act confers on the Interstate Commerce Commission the power to condition its consent?

Mr. STEVENS. Oh, clearly; it can do as it pleases.

Representative HUDDLESTON. Doesn't it provide that the Interstate Commerce Commission must either give permission, or withhold permission?

Mr. STEVENS. No, sir; I discussed that with the commission and they told me to the contrary.

Representative HUDDLESTON. They would refuse if they thought it was best—

Mr. STEVENS (interposing). No, sir; I think it is fundamental law that the commission does have a right to approve, and does have a right to approve with conditions.

Representative HUDDLESTON. Then, have you any objection to a stipulation in this law that they may grant it on equitable terms?

Mr. STEVENS. None whatever. That is the law now.

Mr. HUDDLESTON. There might be some difference of opinion on that point, but there would not be any if it was so provided.

Mr. STEVENS. I haven't any objection, but that is the law now.

Senator POMERENE. Any other questions? [After a pause.] If not, we will hear Mr. Reber.

STATEMENT OF MR. H. L. REBER, PRESIDENT OF THE KINLOCK TELEPHONE CO., ST. LOUIS, MO.

Mr. REBER. My name is H. L. Reber. I am president of the Kinlock Telephone Co., St. Louis, Mo., that operates in the States of Missouri, Illinois, Indiana, and contiguous States.

Senator POMERENE. An independent company?

Mr. REBER. It operates in competition with the Bell Co. at all places where it has exchanges and connections. It does an intrastate business and also an interstate business, and in its connections between St. Louis and East St. Louis there is no distinction. The same instruments and the same employees are engaged in handling both kinds of traffic.

I might state that it was not my intention to speak on this bill, and in order to be brief I will give my conclusions, if I may.

We can see no objection to this bill; we know of no objection on the part of the commissions under which we are operating or on the part of the public—our subscribers. We believe that the bill would simply bring the Federal law in harmony with the State laws, in that in almost every State having provisions, there is a provision for monopoly control of these utilities. Of course, the conflict in the Federal law makes our position an impossible one. We find the different States are granting authority and consents to mergers, making provision for merger where there is all intrastate traffic. When it comes to the question of interstate traffic, which is of great interest to all the public using the independent telephones, we find nobody with power or authority to control that class of traffic.

On several occasions we have appeared before the Department of Justice in order that we might obtain some relief under the so-called Kingsbury commitment. We find them without authority, and they have no authority or power that would take care of the situation. We believe this bill, if it becomes a law, will be a step in advance in that it has authority for the Interstate Commerce Commission to assume jurisdiction and make provision for regulations under which it may be handled.

Now, as a corollary, as I stated to Senator Cummins, if the Government is to change its position and allow a monopoly, there should be some provisions to control that monopoly; and, while this bill can not be amended, we would like to have the privilege at some later time in this session or next session to submit some amendment to that portion of the transportation act which would cover that phase of the question. In that way, if we may have that privilege, we will gladly take advantage of it later on.

I think that is all, if there are no questions.

Senator POMERENE. Have you framed an amendment?

Mr. REBER. No, sir; we have not. We have only given the matter consideration in the last week, because at that time was the first we heard of this bill.

Senator POMERENE. That is a matter, then, for future consideration.

Mr. REBER. Yes, sir.

Senator CUMMINS. I may say that while we have a good many bills pending before this committee, any bill of any importance will receive consideration. I mean the Senate Interstate Commerce Committee.

Representative GRAHAM. This Kingsbury commitment was a stipulation entered into between the A. T. & T. Co. and the Government?

Mr. REBER. Yes; between the A. T. & T. Co., by Mr. N. C. Kingsbury, vice president, and Attorney General McReynolds, dated the 19th of December, 1913.

Representative GRAHAM. How long is this commitment?

Mr. REBER. It is only a few pages.

Representative GRAHAM. If it is agreeable, I would like to have it in our hearings.

Senator POMERENE. It may go in, at the request of Representative Graham.

(The commitment referred to is here printed in full, as follows:)

LETTER TO THE ATTORNEY GENERAL FROM THE AMERICAN TELEPHONE & TELEGRAPH CO., OUTLINING A COURSE OF ACTION WHICH IT HAS DETERMINED UPON—THE ATTORNEY GENERAL'S REPLY—THE PRESIDENT'S LETTER TO THE ATTORNEY GENERAL.

AMERICAN TELEPHONE & TELEGRAPH CO.,
15 Dey Street, New York, December 19, 1913.

THE ATTORNEY GENERAL,
Washington, D. C.

SIR: Wishing to put their affairs beyond fair criticism, and in compliance with your suggestions formulated as a result of a number of interviews between us during the last 60 days, the American Telephone & Telegraph Co., and the other companies in what is known as the Bell system, have determined upon the following course of action:

First. The American Telephone & Telegraph Co. will dispose promptly of its entire holdings of stock of the Western Union Telegraph Co. in such way that the control and management of the latter will be entirely independent of the former, and of any other company in the Bell system.

Second. Neither the American Telephone & Telegraph Co. nor any other company in the Bell system will hereafter acquire, directly or indirectly, through purchase of its physical property or of its securities or otherwise, dominion or control over any other telephone company owning, controlling, or operating any exchange or line which is or may be operated in competition with any exchange or line included in the Bell system, or which constitutes or may constitute a link or portion of any system so operated or which may be so operated in competition with any exchange or line included in the Bell system.

Provided, however, that where control of the properties or securities of any other telephone company heretofore has been acquired and is now held by or in the interest of any company in the Bell system and no physical union or consolidation has been effected, or where binding obligations for the acquisition of the properties or securities of any other telephone company heretofore have been entered into by or in the interest of any company in the Bell system and no physical union or consolidation has been effected, the question as to the course to be pursued in such cases will be submitted to your department and to the Interstate Commerce Commission for such advice and directions, if any, as either may think proper to give, due regard being had to public convenience and to the rulings of the local tribunals.

Third. Arrangements will be made promptly under which all other telephone companies may secure for their subscribers toll service over the lines of the companies in the Bell system in the ways and under the conditions following:

(1) Where an independent company desires connection with the toll lines of the Bell system it may secure such connection by supplying standard trunk lines between its exchanges and the toll board of the nearest exchange of the Bell operating company.

(2) When the physical connection has been made by means of standard trunk lines, the employees of the Bell system will make the toll-line connections desired, but in order to render efficient service it will be necessary that the entire toll circuit involved in establishing the connection shall be operated by and under the control of the employees of the Bell system.

(3) Under the conditions outlined above any subscriber of any independent company will be given connection with any subscriber of any company in the Bell system or with any subscriber of any independent company with which the Bell system is connected who is served by an exchange which is more than 50 miles distant from the exchange in which the call originates.

(4) The subscribers of the independent company having toll connections described above shall pay for such connections the regular toll charge of the Bell Co., and in addition thereto, except as hereinafter provided, a connection charge of 10 cents for each message which originates on its lines and is carried in whole or in part over the lines of the Bell system.

The charges incident to such service shall be made by the Bell Co. against the independent company whose subscriber makes the call, and such charges shall be accepted by the independent company as legal and just claims.

(5) Under this arrangement the lines of the Bell system shall be used for the entire distance between the two exchanges thus connected, provided the Bell system has lines connecting the two exchanges. Where the Bell system has no such lines, arrangements can be made for connecting the lines of the Bell system with the lines of some independent company in order to make up the circuit, but such connections will not be made where the Bell system has a through circuit between the two exchanges.

(6) Any business of the kind commonly known and described as "long lines" business offered for transmission over the lines of the American Telephone & Telegraph Co. shall be accepted for any distance: that is, on such "long lines" business calls shall be accepted where the point of destination is less than 50 miles from the exchange where the call originates as well as where the point of destination is greater than 50 miles therefrom.

(7) Any business of the kind commonly known and described as "long lines" business offered for transmission over the lines of the American Telephone & Telegraph Co. shall be accepted at the regular toll rate and no connecting charge shall be required. But such calls shall be handled under the same operating rules and conditions as apply to calls over the local toll lines.

Very respectfully, yours,

AMERICAN TELEPHONE & TELEGRAPH CO.,
By N. C. KINGSBURY, Vice President.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., December 19, 1913.

MR. N. C. KINGSBURY,
Vice President American Telephone & Telegraph Co.,
15 Dey Street, New York City.

DEAR SIR: Permit me to acknowledge, with expressions of appreciation, your letter of December 19, outlining the course of action which the telephone companies composing the Bell system obligate themselves to follow in the future.

Your frank negotiations in respect of these matters compel the belief that what you propose will be carried out in good faith, and it seems to me clear that such action on your part will establish conditions under which there will be full opportunity throughout the country for competition in the transmission of intelligence by wire.

May I take this occasion to say that the administration earnestly desires to cooperate with and to promote all business conducted in harmony with law; and that, without abating the insistence that the statutes must be obeyed, it will always welcome opportunity to aid in bringing about whatever adjustments are necessary for the reestablishment of lawful conditions without litigation.

Very truly, yours,

J. C. McREYNOLDS,
Attorney General.

THE WHITE HOUSE,
Washington, December 19, 1913.

MY DEAR MR. ATTORNEY GENERAL: Thank you for letting me see the letter from the American Telephone & Telegraph Co. It is very gratifying that the company should thus volunteer to adjust its business to the conditions of competition.

I gain the impression more and more from week to week that the business men of the country are sincerely desirous of conforming with the law, and it is very gratifying indeed to have occasion, as in this instance, to deal with them in complete frankness and to be able to show them that all that we desire is an opportunity to cooperate with them. So long as we are dealt with in this spirit we can help to build up the business of the country upon sound and permanent lines.

Cordially and sincerely, yours,

WOODROW WILSON.

HON. JAMES C. McREYNOLDS,
The Attorney General.

MR. REBER. I feel that the passage of this bill would be an advance and a benefit to everybody interested in the industry. The public, of course, will derive benefits, and the companies will receive benefits. These companies are going on and merging in spite of the Federal law.

Representative HAWES. Do you know of any objections to this bill on the part of any of our citizens of Missouri, or of the independent companies?

MR. REBER. No, sir; the State law provides for and the commission encourage these mergers. They are made in compliance with a public demand, and they are being made. Our company, being an interstate carrier, there is nobody we can go to to protect our interstate

traffic. This bill attempts to take care of that situation to an extent, and as suggested, perhaps later on in the session, or next session, I think it would be proper to advise amendments.

Representative HAWES. How many telephones have the Bell in the city of St. Louis?

Mr. REBER. About 80,000.

Representative HAWES. How many has your company?

Mr. REBER. About 52,000.

Representative HAWES. Do you know how far they overlap—that is, the same service is furnished to the same individuals or concerns?

Mr. REBER. There is probably a duplication in the business service of about 20 per cent; an unnecessary duplication of about 20 per cent. You might say a nuisance duplication, if you wish.

Senator POMERENE. Any further questions? [After a pause.] If not, that is all.

Senator WILLIS. I do not desire to prolong this hearing further. I desire to thank this committee for giving an opportunity to these interests to be heard. I just want to say this much. Our people in Ohio are deeply interested in this, as has been suggested by Mr. Daniels, and Mr. McKelvy, and others.

And in order to further impress upon the committee the interest we have in this bill and the necessity for some legislation of this sort, I should like to read into the record the copies of resolutions and memorials that have come to me from various organizations. First, the memorial of the General Assembly of the State of Ohio. Next a letter showing the action of the Columbus Chamber of Commerce. Next a resolution passed by the city council of the city of Cleveland. Next a resolution addressed to the directors of the Cleveland Chamber of Commerce. Next a letter expressing the desires and wishes of the Postoria Chamber of Commerce. Next a letter indicating the wishes of the Springfield Chamber of Commerce. A resolution passed by the trustees of the Chamber of Commerce of the city of Toledo. Next a resolution passed by the Zanesville Chamber of Commerce. And also a copy of the record showing action by the city council of the city of Youngstown. And also copies of resolutions passed by the Chamber of Commerce of Canton.

(The letters and resolutions so read by Senator Willis are as follows:)

[Joint resolution, approved by Senate April 18, 1921; approved by House April 25, 1921.]

Whereas the public interest demands the elimination of dual telephone service and the unification of the service of competing telephone companies; and Whereas such unification of telephone service, in justice to the stockholders of the existing telephone companies, can only be secured by a consolidation of said competing companies or a purchase by one company of the property of the other; and Whereas such consolidation or purchase is now authorized by the laws of the State of Ohio, but there seems to be some doubt whether such consolidation or purchase is permissible under Federal law. Therefore be it

Resolved by the General Assembly of the State of Ohio, That the Congress of the United States be, and it is hereby, requested to enact such laws or amendments to existing law as will permit competing telephone companies doing either an intrastate or interstate telephone business to unify the service rendered by such companies either by a purchase and sale of the property of one company by the other, or by a consolidation or merger of said companies, when the same is authorized by the laws of the State in which such properties are situated; and be it further

Resolved, That copies of this joint resolution be transmitted by the clerk of the senate to the United States Senators and Members of Congress representing the State of Ohio.

THE COLUMBUS CHAMBER OF COMMERCE,
Columbus, Ohio, April 6, 1921.

Mr. C. Y. McVey,
President Ohio Telephone Co., Columbus, Ohio.

MY DEAR MR. McVEY: At the meeting of the board of directors of the Columbus Chamber of Commerce, held in the secretary's office on April 1, 1921, a resolution introduced in the senate on March 31 by Senator De Weese, memorializing Congress to eliminate dual telephone service was considered.

A brief history of the telephone business as relating to consolidation was presented to the board and a plank of our program of work made from questionnaires sent to the membership in which they requested that we work toward one telephone system.

After a free, frank, and general discussion, H. M. Bush made the following motion: That we approve the resolution as the necessary first step toward eliminating dual telephone service, and the secretary was instructed to so notify our senators and representatives of the General Assembly of Ohio, and, providing the resolution is passed, to urge our Senators and Representatives in Congress to enact such law or amendments to existing law as will permit competing telephone companies to consolidate in the interest of the general welfare.

Motion was seconded by Mr. H. E. Speaks, and, on being put to a vote, was unanimously carried.

Yours, very truly,

JAMES T. DANIELS, Secretary.

CITY OF CLEVELAND, COUNCIL MEETING OF APRIL 11, 1921.

City file No. 54770.

Resolution by Councilman Mr. McGinty:

Whereas dual telephone service works a financial hardship on many citizens who are forced to be subscribers to both services; and

Whereas the unification of the service of competing companies will tend toward the betterment of the service and greater efficiency at less cost to the public; and

Whereas such unification can only be secured by a consolidation of said companies or a purchase by one company of the property of the other; and

Whereas such consolidation or purchase is now authorized by the laws of the State of Ohio, but there seems to be a doubt whether such consolidation or purchase is permissible under Federal law; and

Whereas the General Assembly of the State of Ohio has taken steps to urge the Congress of the United States to enact laws to make such purchase permissible, and the State Senate of Ohio has indorsed such a step: Now, therefore be it

Resolved by the Council of the City of Cleveland, State of Ohio, That the Congress of the United States be, and it is hereby, requested to enact such laws or amendments to existing law as will permit competing telephone companies doing either a city, intrastate, or interstate telephone business to unify the service rendered by such companies, either by a purchase and sale of the property of one company by the other or by a consolidation or merger of said companies, when the same is authorized by the laws of the State in which such properties are situated; and be it further

Resolved, That copies of this resolution be transmitted by the clerk of the council to the Hon. Alcee Pomerene, Hon. Frank B. Willis, Hon. Theodore E. Burton, Hon. Harry C. Gahn, and Hon. Minor G. Norton.

Referred to the committee on public utilities, legislation, and director of law.

Approved April 18, 1921.

POSTORIA, OHIO, April 4, 1921.

Senator A. W. DE WEESE,
Ohio State Senate, Columbus, Ohio.

DEAR SENATOR: The Postoria Chamber of Commerce has been advised that you on March 31 introduced in the Senate a resolution asking the National Congress to pass necessary laws or to amend existing laws legalizing the merger of local telephone companies. We understand that a former United States Attorney General has ruled that the merger of competing telephone companies is in violation of the Sherman antitrust law, and that before these mergers can be completed legally the law must be amended.

We wish to heartily indorse your resolution, and for your information state that we are to-day writing to our own Senator and Representative requesting their support of this resolution.

Some time ago our chamber of commerce interested itself in the local telephone situation with a view to bringing about a merger of the Ohio State Telephone and the Ohio Bell Telephone properties in Fostoria. The advisability of this merger was submitted to our membership in the form of a referendum, with the result that 95 per cent of the members expressed themselves in favor of one telephone system. We believe that this is a representative case and that the same results will be secured in any other town where competing telephone companies are now operating.

Thanking you for your interest in this matter and assuring you of our indorsement and cooperation, we are,

Yours, very truly,

MIL0 C. LLOYD,
Chairman Special Telephone Committee.

SPRINGFIELD, OHIO, April 9, 1921.

Senator A. W. DE WEESE,
Columbus, Ohio.

DEAR SENATOR: The Springfield Chamber of Commerce would be derelict in its duty if we did not take this opportunity of expressing our appreciation and voicing our approval on your joint resolution, S. J. Res. 24, in which you petition for the elimination of dual telephone service. We believe that the unification of competing lines would result not only in standardizing rates but a wonderful betterment in quality of service to the communities which they serve.

For your benefit, Mr. De Weese, our local directorate passed favorably upon a proposed local merger for Springfield on August 8, 1920.

Yours, sincerely,

THE SPRINGFIELD CHAMBER OF COMMERCE.
C. E. HANSELL, Manager.

[Copy of resolution passed by the trustees of the Chamber of Commerce of the city of Toledo, Ohio, at a special meeting held Apr. 5, 1921.]

Whereas the public interest demands the elimination of dual telephone service and the unification of service of competing telephone companies; and,
Whereas the present dual system results in a useless waste of funds and unnecessary duplication, inconvenience, and lack of service to the public; and,

Whereas the Senate of the State of Ohio has introduced a joint resolution requesting the Congress of the United States to enact such laws or amendments to existing laws as will permit competing telephone companies, doing either intrastate or interstate telephone business, to unify the service rendered by such companies, either by purchase or sale of the property of one company by the other, or by consolidation or merger of such companies, and when the same is authorized by the laws of the State in which such properties are situated, said resolution being known as Senate joint resolution 24: Therefore be it

Resolved, That said resolution of the Senate of the State of Ohio, and the action therein recommended, be, and it is hereby, approved.
The above is a true copy of the resolution.

F. G. SAXTON, Secretary.

[Resolution on Senate joint resolution 24, memorializing Congress to permit the elimination of dual telephone service. Adopted Apr. 8, 1921.]

Whereas the elimination of dual telephone service and the unification of the service of competing telephone companies is in the public's interest; and
Whereas such unification of telephone service can only be secured by the consolidation or merger of competing companies; and

Whereas a resolution has been introduced into the Eighty-fourth Ohio General Assembly memorializing Congress to amend present laws or enact new ones so as to permit dual telephone service to be eliminated: Therefore be it

Resolved by the Zanesville Chamber of Commerce, That the Ohio General Assembly be urged to adopt Senate joint resolution 24, to the end that the unification or merger of competing telephone companies may be furthered.

ZANESVILLE CHAMBER OF COMMERCE.

CITY COUNCIL CHAMBER,
Youngstown, Ohio, Monday, April 18, 1921—7.30 p. m.

City Council convened in regular session and was called to order by President Reese.

On a call of the roll the following members responded to their names:
Messrs. Backus, Booth, Copeland, Flannery, Holloway, Payne, Roberts, Smith, Stickel, Sullivan, Welsh, and Woods—12. Absent, 1.
The journal of the last session was approved.

MISCELLANEOUS BUSINESS.

Mr. Payne moved that council go on record as indorsing the resolution to request Congress to permit the consolidation of telephone companies, and that copies of said indorsement be sent to the State representatives and State senators. Carried.

Representative GRAHAM. I have here a letter from the general counsel of the Illinois Independent Telephone people, which has in it the very language used by one of the witnesses. I would like to read this into the record.

Senator POMERENE. It may be read into the record.

(The letter so read by Mr. Graham is as follows:)

THE MISSISSIPPI VALLEY TELEPHONE CO. (INC.),
O. F. BERRY, GENERAL MANAGER,
Central Office, Carthage, Ill., April 30, 1921.

HON. WILLIAM J. GRAHAM, M. C.,
Washington, D. C.

MY DEAR GRAHAM: I have before me your letter with a paragraph of a bill that is to be introduced by you in relation to the transfer of telephone companies. Mr. McKinnon talked to me from Washington day before yesterday and I wired you yesterday as requested in your letter. A number of years ago, when there was considerable contest going on in many departments of the telephone service, a ruling was made by the Department of Justice that a telephone company could not buy more telephones practically than it sold. It applied in a large measure, of course, to the Bell people. Some of the independents became frightened for fear the Bell Co. would own too much telephone property, and this ruling was made and adhered to.

The result of it was that the large companies that should have been perfectly able to take care of themselves proceeded, when they felt like it and could do so, to get permission to sell their properties, and the companies of medium size, on account of the difficulties they met in the Department of Justice, were practically unable to make a sale. You will agree with me that anything that prevents an owner of any kind of property from selling or disposing of that property discounts the value of the property. There has been a strong sentiment growing throughout the entire country, and particularly in Illinois, for a removal of that restriction so that the medium-sized companies could go before the commission and get permission, if they desired to do so, to sell their properties. In many places yet in Illinois there is a duplication of telephone companies. That should not be. One system properly regulated is the ideal telephone system, and now with regulation, there is no danger of the public being in any wise injured. The authority to sell telephone property is not so much to the advantage of the large companies that may be able to buy as it is to the small companies, in many instances, who are compelled to sell. The medium-sized companies, for the last year or two, who have been seeking to finance their property have been met with the question as to why they do not sell, and the answer has been: "We can not, because of the rulings of the Government." That at once depreciates the value of that property for borrowing purposes or any other, as you can readily see.

If the bill referred to becomes a law, it will give the large number of medium-sized companies that desire to sell an opportunity to do so, and not only that, but it will assist them to finance their company for construction and other improvements far easier than they can do it now, when it is known that they are practically barred from selling. If a farmer could not sell his farm whenever he had an opportunity to do so and desired to do so, it would depreciate the value of that farm; so it does with the telephone companies. The officers of the Independent Telephone Association of Illinois, which association represents more than a thousand exchanges, I think, are practically a unit for this measure. It was discussed at our last State convention and I took the position as its general attorney that it should be done, and there was no objection anywhere. I would be glad to assist you or answer any question I can,

or if you feel that it is necessary, or even helpful, and will write me to that effect, I will see that our association takes steps to assist in the matter and send some one to Washington to present the matter, if necessary.

With very best wishes, I remain,
Very truly, yours,

O. F. BERRY.

Representative GRAHAM. I understand Mr. Hawes is in communication with the Chamber of Commerce of St. Louis. Has that communication arrived yet?

Representative HAWES. No.

Representative GRAHAM. If such action is taken by the Chamber of Commerce of St. Louis and is received by Representative Hawes, may it be afterwards incorporated into the record?

Senator POMERENE. It may be incorporated in the record when it comes.

Is there anyone else who desires to be heard in this matter? We have heard from the proponents—those who favor the bill. Is there anybody here in opposition to it? [After a pause.] If not, we will consider the hearings concluded.

(Whereupon, at 1.30 o'clock p. m., the committee adjourned.)

**END OF
TITLE**